# Barclays Official

# CALIFORNIA CODE OF REGULATIONS

# Title 2. Administration

Complete Title (continued)

Vol. 3



## BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

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# TITLE 2. ADMINISTRATION

## NOMENCLATURE CROSS-REFERENCE

(NOTE: Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross–Reference Table for the new organizational headings used in this Title.)

## **OLD HIERARCHY**

## **REVISED HIERARCHY**

Chapter	Division
Subchapter	Chapter
Group	Group
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# Title 2. Administration

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Barclays Official

# CALIFORNIA CODE OF REGULATIONS

# Title 2. Administration

**Division 3. State Property Operations** 

**Chapter 1. State Lands Commission** 

Vol. 3



# **Chapter 1. State Lands Commission**

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# **Division 3. State Property Operations**

## Chapter 1. State Lands Commission

(Originally Printed 1-22-45)

## Article 1. General Provisions

## § 1900. Definitions.

The following definitions shall apply to this Chapter unless otherwise provided.

- (a) The term "applicant" includes any person who files an application under these regulations.
- (b) The term "person" includes any individual, firm, partnership, business entity, business trust, association, corporation, or governmental entity or agency.
- (c) The term "lease" includes a permit, right-of-way, easement, license, compensatory agreement, or other entitlement of use.
  - (d) The term "structure" means any manmade construction.
- (e) The term "submerged lands" means the area lying below the elevation of ordinary low water in the beds of all tidal and nontidal navigable waters.
- (f) The term "tidelands" means the area lying between the elevations of ordinary low water and ordinary high water on lands subject to tidal action.
- (g) The term "uplands" shall mean lands bordering on navigable waterways.
- (h) The term "school lands" refers to all Sections 16 and 36 granted to the State for the benefit of common schools by Chapter 145 of the Federal Statutes of 1853.
- (i) The term "lieu or indemnity lands" refers to those lands acquired by the State in place of school lands it previously acquired or school lands to which it did not receive title because they were either mineral in character, had not been sectionalized, or were subject to prior established rights.
- (j) The terms "merchandise," "product" and "commodity" are interchangeable and shall include, goods, wares, chattels, personal property of every description, cargo, freight, mail, vessel's stores and supplies, articles, matter and material.

NOTE: Authority cited: Sections 6002, 6105, 6108, 6301, and 6501, Public Resources Code; and 3 Cal. 3d 462, 478 (tide and submerged lands). Reference: Sections 6301 and 6501, Public Resources Code.

## HISTORY

- 1. Repealer of Article 1 (Sections 1900–1914) and new Article 1 (Sections 1900–1911) filed 6–2–78; effective thirtieth day thereafter (Register 78, No. 22). For prior history, see Registers 77, No. 6; 75, No. 22; 73, No. 9; 69, No. 15; 64, No. 23; 58, No. 5; 55, Nos. 12 and 25, No. 5.
- Repealer of Article 1 (Sections 1900–1911) and new Article 1 (Sections 1900–1910 not consecutive) filed 12–2–81; effective thirtieth day thereafter (Register 81, No. 49).

## § 1901. Office of Commission.

The principal office of the Commission is 100 Howe Avenue, Suite 100–South, Sacramento, California 95825, telephone (916) 574–1900. The Commission's Mineral Resources Management Division is located at 200 Oceangate, Suite 1200, Long Beach, California 90802, telephone (310) 590–5201. Applications for exploration or extraction of minerals, oil and gas, or geothermal resources shall be sent to the Mineral Resources Management Division. All other applications shall be sent to the principal office.

NOTE: Authority cited: Sections 6102, 6103.2, 6105, 6108, and 6216, Public Resources Code. Reference: Section 6102, Public Resources Code.

## HISTORY

- Change without regulatory effect amending section filed 8-15-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 33).
- 2. Change without regulatory effect amending section filed 11–21–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 47).

## § 1902. Meetings of the Commission.

The commission shall meet at Sacramento on the last Thursday of each month unless, upon due notice, the date and place of meeting are otherwise designated by at least two members.

NOTE: Authority cited: Sections 6104, 6105, and 6108, Public Resources Code. Reference: Section 6104, Public Resources Code.

## § 1904. Application Requirements and Priority.

Application requirements and priority shall be as set forth in Public Resources Code Sections 6801 and 6223 respectively.

NOTE: Authority cited: Sections 6105, 6108, 6216, 6223, 6301, 6501.2, and 6801, Public Resources Code; and Section 65940, Government Code. Reference: Sections 6223 and 6501.2, Public Resources Code.

## § 1905. Filing and Processing Fees.

Filing and processing fees shall be paid by applicants at the time of filing an application as follows:

- (b) Processing fee for Commission services computed and charged as follows:
- (1) A non-refundable expense deposit for routine or uncomplicated services based on an average cost of such services; or
- (2) A refundable expense deposit for non-routine and complicated services based on the estimated costs of such services. Any unexpended portion of such expense deposit shall be refunded to the applicant;
- (3) An additional expense deposit for additional or unanticipated services, to be paid within 21 days of written notice being mailed to the applicant. Any unexpended portion of such expense deposit shall be refunded to the applicant.

NOTE: Authority cited: Sections 6105, 6108, 6214, 6218, 6309, 6321, 6502, 6503.5, 6703, and 7706, Public Resources Code. Reference: Sections 6214, 6218, and 7706, Public Resources Code.

## § 1906. Guaranty Deposits.

The Commission may require deposits of either bond, cash or other acceptable security to insure compliance with terms and conditions of bids, leases, contracts, or any other agreements.

NOTE: Authority cited: Sections 6005, 6105, 6108, 6301, 6405, 6501.2, 6829(d), and 6899, Public Resources Code. Reference: Sections 6501.2, and 6829(d), Public Resources Code.

## § 1907. Insurance.

The Commission may require insurance against such risks and in such amounts that it may determine to be within the best interests of the state. NOTE: Authority cited: Sections 6005, 6105, 6108, 6301, 6405, 6501.2, 6829, and 6899, Public Resources Code. Reference: Sections 6501.2, 6829, and 6899, Public Resources Code.

## § 1909. Bidding Procedure.

- (a) Except as otherwise provided in this chapter, when competitive bidding is required, it shall be conducted generally as follows:
- (1) The Commission shall cause a notice of intent to receive bids to be published at least once in a newspaper of general circulation in the county in which the lands, interest or project is located and may have such notice published at least once in a newspaper of general circulation in the City of Los Angeles, or San Francisco, or Sacramento. Such notice shall specify the lands or interest (oil, gas or mineral lease; easement; timber; land; etc. for sale or project (public works or consultant contracts, oil, gas or mineral exploration, etc.) for bid, the time and place for the receipt and opening of bids, and the availability of appropriate approved bid packages and forms at the office of the Commission.
- (2) The Commission shall at the specified time and place publicly open or have opened the sealed bids and shall award the highest or lowest responsible bidder, as appropriate, unless, in the opinion of the Commission such award is not in the best interest of the State, in which case the Commission may reject all existing bids and call for new ones or terminate bidding.
- (3) The Commission shall have broad discretion as to whether a bidder is "responsible" based on what it deems to be in the best interest of the
- (4) Except as otherwise provided in the bid instructions specifying a shorter period, and/or limiting the firm bid requirement to a specific num-

ber of high or low bidders as appropriate, each bid shall be a firm bid, irrevocable for a period not to exceed ninety (90) days from the date of bid opening.

(b) Bidders shall bear all reasonable expenses incurred by the Commission for bid processing and award including costs of approval, advertising and environmental review, in accordance with terms set forth in the approved bid package.

NOTE: Authority cited: Sections 6005, 6105, 6108, 6218, 6405, 6406, 6501.2, 6811, 6815.2, 6827, 6834, 6835, 6836, 6852, 6871.3, 6874, 6900, 6992, 6993, 7052, 7301, 7361, 7501, and 7604, Public Resources Code. Reference: Sections 6005, 6811, 6827, 6834, 6835, 6836, 6852, 6871.3, 6912, 6992, and 7059, Public Resources Code.

## § 1910. Execution and Delivery of Documents.

All documents to be executed by applicant shall be signed by the applicant and certified, witnessed or acknowledged as required, prior to their execution and delivery by the Commission.

NOTE: Authority cited: Sections 6105, 6106, 6108, and 6504, Public Resources Code. Reference: Sections 6106 and 6108, Public Resources Code.

## § 1911. Interest and Penalty Payments.

- (a) Time of Payment
- (1) Any payment pursuant to any permit, lease, contract, or other agreement due the Commission shall be paid on or before the date specified in the instrument.
- (2) If the date that a sum becomes due and payable to the Commission is a Saturday, Sunday, Federal or State holiday, the due date is extended to the next business day.
- (3) Timeliness of receipt of remittances sent by mail to the Commission shall be governed by the postmark date as described in Government Code Section 11002.
- (4) In case of a postmark by a private postage meter, the date specified thereon shall be considered as the date of payment. Where a payment is received after the due date and where a question arises as to the actual date of mailing, a declaration executed under penalty of perjury by the person responsible for the mailing of payment to the State specifying the date of mailing shall be considered as evidence of the date of actual mailing.
  - (b) Interest and Penalty

Unless otherwise provided in the permit, lease, contract, or other agreement:

- (1) Simple interest shall be calculated at the rate of one and one–half percent (1 1/2%) per month on the amount due the Commission from the date payment was due the Commission until the date the payment is received.
- (2) Penalties shall be calculated at the rate of five percent (5%) on the principal sum due the Commission.
- (3) Interest and penalty shall be charged for failure to make a timely payment; or the mode of payment is not honored by a bank, savings and loan, post office, or other financial institution.
  - (c) Exemption from Interest and Penalty
- (1) The Commission may waive the assessment of interest and/or penalty where:
- (A) Incorrect instructions were rendered to a party by the Commission's staff, or use by the party of an accounting procedure pursuant to an agreement with a member of the Commission staff; or
- (B) Notwithstanding the provisions of paragraph (2) *infra*, negotiated settlements are approved by the Commission and provide for a waiver of penalty and/or interest.
- (2) Penalty only shall be excused where failure to make a timely payment was due to one of the following:
  - (A) The death or serious illness of a natural party;
  - (B) Catastrophe, such as fire, flood, theft, vandalism, or riot;
- (C) The fact the books and records of a party were impounded by court order, or were in the hands of a Federal or State agency, and unavailable for use by the party;

- (D) The discovery by a party, before that of the Commission staff, of the erroneous amount of a party's original payment and the prompt tender by the party of the balance due.
  - (d) Payments

Payments shall be applied to retire obligations in the following order:

- (1) interest and penalty
- (2) past principal
- (3) current principal
- (e) Any person who uses or occupies any lands owned or controlled by the State under the jurisdiction of the Commission without a lease, permit or other agreement and who subsequently obtains a lease, permit or other agreement providing for the payment of back rent, shall pay penalty and interest in accordance with the provisions in (b), (c), and (d) above.

NOTE: Authority cited: Sections 6108 and 6224, Public Resources Code. Reference: Section 6224, Public Resources Code; and Section 11002, Government Code.

#### HISTORY

1. New section filed 12-6-83; effective thirtieth day thereafter (Register 83, No. 50)

# Article 1.5. Meeting Notice and Agenda Requirements

NOTE: Authority cited: Section 6108, Public Resources Code. Reference: Division 6, Public Resources Code.

#### HISTORY

- New Article 1.5 (Sections 1950–1954) filed 7–31–75; effective thirtieth day thereafter (Register 75, No. 31).
- 2. Repealer of Article 1.5 (Sections 1950–1954) filed 11–23–82; effective thirtieth day thereafter (Register 82, No. 48).

# Article 2. Leasing or Other Use of Public

## § 2000. General.

- (a) This article applies to the leasing of all lands under the Commission's jurisdiction for all surface uses except the exploration for or extraction of natural resources including minerals, oil, gas or other hydrocarbons, or geothermal resources or any other natural resources, excluding timber.
- (b) Leases or permits may be issued to qualified applicants and the Commission shall have broad discretion in all aspects of leasing including category of lease or permit and which use, method or amount of rental is most appropriate, whether competitive bidding should be used in awarding a lease, what term should apply, how rental should be adjusted during the term, whether bonding and insurance should be required and in what amounts, whether an applicant is "qualified," etc. based on what it deems to be in the best interest of the State.
- (c) Leases or permits for tide or submerged lands shall generally only be issued to riparian or littoral upland owners or use right holders, provided however that such leases or permits may be granted to the best qualified applicant irrespective of riparian or littoral status.
- (d) Leases or permits for school, lieu or indemnity lands shall be for value or value enhancement purposes.

NOTE: Authority cited: Sections 6005, 6105, 6108, 6216, 6301, 6309, 6321, 6501, 6501.1, and 6501.2, Public Resources Code. Reference: Sections 6216, 6501.1, and 6501.2, Public Resources Code.

## HISTORY

- 1. Repealer of Article 2 (Sections 2000–2017) and new Article 2 (Sections 2000–2012) filed 2–2–77; designated effective 3–1–77 (Register 77, No. 6). For prior history, see Registers 55, No. 12; 64, No. 23; 65, No. 25; 69, No. 15; 70, No. 11; 73, No. 9; and 75; No. 22.
- 2. Repealer of Article 2 (Sections 2000–2012) and new Article 2 (Sections 2000–2010) filed 6–2–78; effective thirtieth day thereafter (Register 78, No. 22).
- Repealer of Article 2 (Sections 2000–2010) and new Article 2 (Sections 2000–2004) filed 12–2–81; effective thirtieth day thereafter (Register 81, No. 49).

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## § 2001. Applications Forms.

Applications for leases or permits under this article are available from and shall be submitted to the principal office of the Commission. Note: Authority cited: Sections 6105, 6108, 6223, 6321, 6501, 6501.2, and 6502,

Public Resources Code. Reference: Sections 6321 and 6502, Public Resources Code.

## § 2002. Categories of Leases or Permits.

(a) General Lease: Uses may include the following:

[The next page is 291.]

- (1) Commercial: Income producing uses such as marinas, restaurants, clubhouses, recreation piers or facilities, docks, moorings, buoys, helicopter pads, decks or gas service facilities.
- (2) Industrial: Uses such as oil terminals, piers, wharves, warehouses, stowage sites, moorings, dolphins and islands; together with necessary appurtenances.
- (3) Right of Way: Uses such as roadways, power lines, pipelines or outfall lines, except when used only as necessary appurtenances.
  - (b) General Permit: Uses may include the following:
- (1) Public agency uses such as public roads, bridges, recreation areas or wildlife refuges having a statewide public benefit;
- (2) Public Resources Code Section 6321 protective structures such as groins, jetties, sea walls, breakwaters and bulkheads;
- (3) Non income producing uses such as piers, buoys, floats, boathouses, docks, waterski facilities, and campsites not qualifying for a private recreational pier permit under 2002(f). Other uses may include campsites, cabins, dwellings, arks, houseboats, or boathouses provided that when such uses are located on sovereign lands that such uses are not found to be inconsistent with public trust needs.
  - (c) Grazing Lease: Use includes the feeding of livestock on forage.
- (d) Agricultural Lease: Uses may include farming, silviculture and horticulture.
- (e) Forest Management Agreement: Uses may include reforestation, improvement of timber growth and soil productivity, vegetation control, reduction of fire and erosion hazards, insect or disease control or any other use that enhances the value of lands subject to the agreement.
- (f) Private Recreational Pier Permit: Use is limited to any fixed facility for the docking or mooring of boats constructed for the use of the littoral landowner, as specified in Public Resources Code Section 6503.5, and does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats.
- (g) Salvage Permit: Use includes the salvage of all abandoned property over and upon ungranted tide and submerged lands of the State which property belongs to the State and is under the Commission's jurisdiction pursuant to Public Resources Code Section 6309. The Commission may retain or sell any or all salvaged property or may allow the permit applicant to retain it.

NOTE: Authority cited: Sections 6105, 6108, 6201, 6210.3, 6221, 6309, 6321, 6322, 6501, 6501.1, and 6501.2, Public Resources Code. Reference: Sections 6201, 6309, 6321, 6501.1, and 6503.5, Public Resources Code.

## § 2003. Rental.

- (a) Rental for the various categories of uses shall be generally as follows:
- (1) Commercial Use: An annual rental based on any one or combination of the following rental methods, with a minimum rental of \$250:
- (A) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);
  - (B) 9% of the appraised value of the leased land;
  - (C) The volume of commodities passing over the lease premises.
- (2) Industrial Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of \$250:
- (A) 9% of the appraised value of the leased land together with 2H per diameter inch per lineal foot of pipelines and conduits on the leased premises;
  - (B) The volume of commodities passing over the lease premises.
- (3) Right-of-Way Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of \$100:
- (A) 9% of the appraised value of the leased lands, together with compensation for any damage caused to such lands;
  - (B) 2¢ per diameter inch per lineal foot;
  - (C) The volume of commodities passing over the lease premises.
- (4) General Permits: Annual rental shall be based on 9% of the appraised value of the leased lands with a minimum rental of \$50.

- (A) No rental shall be charged for public agency use of tide and submerged lands if the Commission at its sole discretion, determines that a statewide public benefit accrues from such use.
- (B) Monetary rental for Public Resources Code Section 6321 protective structures may be waived if the Commission determines that a public benefit accrues from the installation of such structures.
- (5) Private Recreational Pier Permits: Pursuant to Public Resources Code Section 6503.5 a rent free permit shall be issued to those applicants demonstrating their qualifications under that section as implemented by 2002(f).
- (6) Grazing: An annual rental based on appraised value for the intended use.
- (7) Agricultural: An annual rental based on any one or a combination of the following rental methods with a minimum rental of \$250:
- (A) A percentage of annual gross income (the percentage being based on analysis of the market for like uses and other relevant factors);
  - (B) 9% of appraised value of the leased lands.
- (8) Forest Management Agreements: Rental shall constitute enhancement of the land's value resulting from the use.
  - (9) Salvage Permit: Rental shall be as follows:
- (A) A rental of \$25.00 per annum per acre, computed on a whole or fractional basis, for the total acreage of the permit area; and
- (B) 25% of the net salvage value up to \$25,000 and 50% of all such value over that amount for all salvaged property the salvor is permitted to retain; or
- (C) The net salvage value of any property the State retains less any rental to which it is entitled; and
- (D) Such other consideration as may be deemed by the Commission to be in the best interest of the State.
- (b) The following factors shall be considered by the Commission in determining which rental method should apply:
- (1) The amount of rental the State would receive under various rental
- (2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;
- (3) Whether a particular method or amount of rental would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;
- (4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6371.
- (5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;
- (6) Other factors relating to the appropriateness of the proposed rental method.
- (c) The following limitations shall apply to rental based on the volume of commodities passing over State lands:
- (1) Rental shall not be imposed more than once for the identical commodity passing over the same State land if the ownership of that commodity has not changed.
- (2) The rental rate for a right-of-way for passage of a commodity across State lands shall be made proportional to the percentage of the total length of the pipeline or conduit that such right-of-way comprises. For the purposes of this section, the total length of a pipeline or conduit shall be the length of the pipeline or conduit between two facilities, uninterrupted by another facility. "Facility" includes terminal, production, storage, refining, manufacturing, processing, mixing or intermixing facilities.
- (d) Rental adjustment during the lease term shall be provided for as appropriate.

NOTE: Authority cited: Sections 6105, 6108, 6309, 6321.2, 6503, 6503.5, and 6504, Public Resources Code. Reference: Sections 6321.2, 6503, 6503.5, and 6504, Public Resources Code.

## HISTORY

1. Editorial correction of printing error in subsection (a) (Register 92, No. 22).

#### § 2004. Term.

- (a) The term for leases and permits including any optional renewal periods shall be no longer than necessary to accomplish the intended use or purpose.
- (b) The term shall be limited according to standard commercial practices with maximum terms as follows:

(1) General Lease 49 years General Permit

Forest Management Agreement

(2) Agricultural Lease 25 years (3) Grazing Lease 10 years

Private Recreational Pier Permit General Permit Recreational Use

(4) Salvage Permit 1 year but extendable for

one additional

NOTE: Authority cited: Sections 6008, 6105, 6108, 6309, 6321, 6501, 6501.2, and 6505.5, Public Resources Code. Reference: Sections 6501.2 and 6505.5, Public Resources Code

## Article 2.1. Sale of Public Lands and Timber

## § 2030. Sale Restrictions.

- (a) Sales of tide and submerged lands are prohibited.
- (b) Sales of school, lieu or indemnity lands are restricted as follows:
- (1) No new purchase applications shall be accepted except those from public agencies, entities or utilities or under the circumstances determined by the Commission to be in the best interest of the State. Such sales may be accomplished with or without competitive bidding.
- (2) The Commission on a selective basis may offer individual parcels for sale to the general public pursuant to competitive bidding on terms and conditions set forth in an approved bid package.
- (3) An existing lessee on any parcel offered for sale shall have the right to match the highest bid.

NOTE: Authority cited: Sections 6005, 6105, 6108, 6210.2, 6216, 6301, 7301, 7351, 7352, 7357, 7405, 7406, 7409, 7410, and 7418, Public Resources Code. Reference: Sections 6216, 7301, 7352, 7357, and 7410, Public Resources Code. HISTORY

1. New Article 2.1 (Sections 2030–2034, not consecutive) filed 12–2–81; effective thirtieth day thereafter (Register 81, No. 49).

## § 2031. Applications.

Applications for purchase of lands or interests under this article shall be available from and shall be filed with the principal office of the Commission. Purchase applications shall be processed according to the date the application is accepted as complete by the State.

NOTE: Authority cited: Sections 6105, 6108, 6223, 6301, 7301, 7352, 7353, 7355, 7356, 7358, and 7410, Public Resources Code. Reference: Sections 6223 and 7356, Public Resources Code.

## § 2032. Sales Price.

The sale price of lands sold under this article shall be equal to or greater than the appraised fair market value of such lands.

NOTE: Authority cited: Sections 6105, 6108, 7301, 7305, 7352, 7410, and 7413, Public Resources Code. Reference: Section 7305, Public Resources Code.

## § 2034. Timber Sales.

- (a) Timber sales shall be conducted pursuant to competitive bidding, on terms and conditions set forth in an approved bid package for a price of no less than appraised fair market value except that:
- (1) Sales of small volumes of timber valued at \$25,000 or less or emergency salvage sales of fire, insect or disease damaged timber may be sold by direct solicitation of bids; and
- (2) The removal of pre-commercial or dead or down trees for the purpose of stimulating the growth of residual trees or to reduce fire, insects, disease or other hazards may be conducted without charge.
  - (b) Payment shall be:

- (1) Based on an estimated volume of standing timber or when appropriate by log scale of the timber designated for sale by species; and
- (2) Made in cash in full at the time of bidder award for sales having a price of \$25,000 or less, and
- (3) Made in two or more installments covering separate cutting blocks for sales having a price greater than \$25,000, the first payment to be made at the time of bidder award and subsequent payments to be made at specified times.
- (c) Reforestation or rehabilitation may be required as a condition of sale.

NOTE: Authority cited: Sections 6105, 6108, 6211, 6216, 6301, and 7361, Public Resources Code. Reference: Sections 6216 and 7361, Public Resources Code.

# Article 2.5. Salvage Permits for Abandoned **Property**

NOTE: Authority cited: Section 6108, Public Resources Code.

#### HISTORY

- 1. New Article 2.5 (Sections 2050-2053) filed 5-30-75; designated effective 6-30-75 (Register 75, No. 22).
- 2. Repealer of Article 2.5 (Sections 2050-2053) filed 12-2-81; effective thirtieth day thereafter (Register 81, No. 49). For prior history, see Register 77, No. 6.

# Article 2.9. Exploration Permits

## § 2100. Application for Exploration Permits.

General permits are required for the conduct of geophysical surveys and geological surveys on State lands.

- (a) Any person who meets the requirements of Section 6801 of the Public Resources Code may apply to the Commission for a geophysical survey or geological survey general permit. Such application shall contain the following:
  - (1) A description and map of the State lands involved.
- (2) Name, address, and status of citizenship of applicant; if the applicant is a corporation, the corporate name and status, the name of the president, the secretary, and an officer authorized to execute contracts and leases and receive service of process.
  - (3) A description of the proposed survey methods.
  - (4) The dates when the survey will be commenced and completed.
  - (5) The purpose for conducting the survey.

NOTE: Authority cited: Section 6108, Public Resources Code. Reference: Sections 6212.2, 6801 and 6826, Public Resources Code.

## HISTORY

1. Repealer of Section 2100 in Article 3 and new Article 2.9 (Section 2100) filed 6–25–82; designated effective 8–26–82 (Register 82, No. 26). For history of former section, see Registers 77, No. 6; 73, No. 9; 64, No. 17; and 61, No. 15.

# Article 3. Oil and Gas Leases, Exploration Permits, and Operating Requirements

## § 2101. Records.

## HISTORY

1. Repealer filed 6-25-82; designated effective 8-26-82 (Register 82, No. 26).

## § 2102. Alteration of Facilities.

Any proposed change in, or addition to, pipe line systems or any proposed installation or removal of equipment which can result in a different routing of production to or from the gauge tanks shall be reported to the state inspector giving the reason for such proposed change, addition, installation or removal at least 24 hours prior thereto. Plats and drawings showing the change shall be furnished to the Division of State Lands upon request.

## § 2103. Tankage.

(a) All oil shall be stored in tanks suitable for accepted methods of calibration, gauging and sampling as expressed by the American Petroleum Institute Code.

**Page 292** Register 92, No. 22; 5-29-92

- (b) Tanks shall be equipped with such safety devices and fire walls as are required in the area in which such tanks are located.
  - (c) Sufficient tankage shall be provided by the lessee.
- (d) No tank trucks, trailers, tank cars, or vessels will be gauged unless proper certified gauge tables or other adequate evidence of container capacity is presented to the inspector and approved by him in advance of use.
- (e) Sediment and other material deposited on or near the bottom of tanks shall be removed to permit proper gauging and sampling at the request of the inspector.
- (f) All gauge tanks shall be strapped and calibrated by a disinterested party. The process shall be in accordance with that expressed in the American Petroleum Institute Code. Strapping and calibration of gauge tanks by a representative of an interested party may be permitted only upon advance notification of such action to and approval by the Division of State Lands.
- (g) When tanks are to be strapped or restrapped, the inspector shall be notified at least 24 hours in advance to permit him to be a witness to the procedure.
- (h) All tanks shall be calibrated in barrels (of 42 gallons per barrel) and the volume expressed in gauge tables computed to the nearest one-hundredth of a barrel for each one-eighth of an inch in tank height, or in accordance with the procedure expressed in the American Petroleum Institute Code.
- (i) Gauge tables in duplicate for each gauge tank shall be furnished to the Division of State Lands immediately upon preparation. Additional sets of gauge tables shall be furnished to the Division of State Lands upon request.

#### HISTORY

1. Amendment filed 8–17–55, effective thirtieth day thereafter (Register 55, No. 12)

## § 2104. Sealing of Tanks.

- (a) At the time of taking the high gauge of a tank the inspector shall seal or lock all inlet lines to the tank and any seals on the tank outlet line shall be removed.
- (b) At the time of taking the low gauge of a tank the inspector shall seal or lock all outlet lines from the tank and any seals on the inlet line shall be removed.
- (c) In the event any such state tank seal is removed, except by those authorized to do so, payments shall be made to the State for the run as estimated by the inspector at the rate then prevailing for oil of the highest gravity run from the tank during the previous 30 days.
- (d) Under no circumstances shall any person other than the inspector remove, break, or alter, any seal or lock installed by the State unless the consent of the inspector in charge of the field is first obtained. Such consent must be confirmed by the inspector in writing, otherwise the procedure specified in Section 2104(c) will govern. Where operations require, seals on bleeder valves and meter by–passes may be removed on the condition that such removal and the time thereof are reported on the applicable daily operating reports. Failure to report such removal may result in the recession of permission to the operator to remove seals from bleeder valves and meter by–passes under any operating conditions.

## § 2105. Shipments from Sumps or Pits.

Before any shipment of fluid is made any sump or pit, notice shall be given to the inspector. The quantity of the fluid shipped from any sump or pit shall be determined by the inspector and the quality shall be fixed by laboratory tests made pursuant to Section 2108 hereof. In the event that any fluid is shipped from any sump or pit without such determination by the inspector, the full capacity of the sump or pit will be considered to have been run and payments shall be made to the State for this presumed run at the rate then prevailing for oil of the highest gravity run from the lease during the previous 30 days.

## § 2106. Condition of Oil.

- (a) Previous to high or opening gauge all free water shall be drawn from the tank until the maximum level of nonmerchantable oil and water shall be at least four inches below the bottom of the outlet connection.
- (b) All oil to be gauged and shipped shall be in a marketable condition, i.e., the percentage of bottom sediment and water as shown on test shall not exceed 3 percent, if dehydration or cleaning costs are to be allowed.
- (c) Where a tank sample shows a bottom sediment and water content greater than 3 percent and the contents are shipped, the gravity of the wet oil shall be reduced to 3 percent wet gravity and such gravity shall form the payment of the state royalty.
- (d) Where an adjustment is made from a wet gravity to another wet gravity or to a dry gravity, the adjustment shall be made by the calculation of the American Petroleum Institute gravity of the oil in the mixture or emulsion or by means of the correction chart published by the Division of State Lands for that purpose, such chart being known as "Gravity of Oil in Mixtures or Emulsions of Oil and Water." In all adjustments of gravity by calculation, or the use of a correction chart, the specific gravity of the water in the mixture or emulsion shall be considered as 1.0000 at 60 degrees F. unless prior written approval has been secured for another value of specific gravity as determined by tests of the water produced.

## § 2107. Gauging and Sampling.

- (a) Gauges shall be taken by an inspector in the presence of a representative of the lessee. In the event of disagreement, gauges shall be retaken, the average of which shall be binding. In the event that a representative of the lessee is not present after having been given an opportunity to be present, gauges taken by the State shall be binding on the lessee.
- (b) Gauges shall be taken as specified in the American Petroleum Institute Code
- (c) Temperature of the oil in a tank shall be taken at the time of gauging with a standard thermometer which shall be immersed not less than two minutes at or about the midpoint of the column of oil, not less than 12 inches from the tank shell, and in the manner expressed in the American Petroleum Institute Code.
- (d) Samples for laboratory testing shall be taken at the time of the high or opening gauge.
- (e) The method of sampling shall correspond with the method expressed in the American Petroleum Institute Code.
- (f) A sample shall consist of one liquid quart and the means for taking such sample shall be furnished by the lessee.

## § 2107.5. Automatic Custody Transfer.

- (a) Any applicant holding a lease may submit an application to install lease automatic custody transfer equipment. The application shall include (1) a schematic drawing of the proposed system, and (2) specifications of the major equipment components. The lessee shall afford access to any manufacturer's drawings and equipment specifications of the major equipment components which the commission may deem necessary.
- (b) Positive displacement meter installations in lease automatic custody transfer equipment shall comply with specifications outlined in the latest revision of American Petroleum Institute Code No. 1101, unless specifically modified with the approval of the State Lands Division. The equipment shall include a means for proportional sampling for securing laboratory test samples, or a means for quality measurement.
- (c) Upon determination that acceptable standards of accuracy for measuring oil shipments have been obtained, the commission will approve oil shipments by lease automatic custody transfer.
- (d) The equipment shall be maintained and operated in a manner so as to meet the accepted standards of accuracy for the measurement of oil shipments. Use of this equipment shall be discontinued at any time upon determination by the lessee or the inspector that the standards of measurement of accuracy or quality are not being obtained.
- (e) The opening and closing meter readings shall be made with a state gauger present.
- (f) A memorandum of transfer (run ticket) shall be furnished the State for each run of oil within 24 hours of the completion of such run.

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- (g) For each run of oil, a copy of official "Gauger's Report of Oil Run" will be furnished to the lessee.
- (h) Where approved lease automatic custody transfer equipment is in operation, the provisions of Sections 2104, 2106(d), 2107 and 2109 of this title are not applicable. Where circumstances require conventional gauging for custody transfer, the aforesaid sections shall apply.

#### History

1. New section filed 3–4–60; effective thirtieth day thereafter (Register 60, No. 5). 2. Refiled 6–14–60 (Register 60, No. 14).

## § 2108. Laboratory Tests.

- (a) All laboratory tests shall be made in accordance with the procedure expressed in the American Petroleum Institute Code and shall consist primarily of the gravity and bottom sediment and water content determination. Samples for laboratory tests shall be furnished by the lessee as required by the State.
- (b) Laboratory tests shall be run not later than 24 hours after the time of taking the samples.
- (c) The readings and results of tests of oil samples made by the State shall be binding upon the lessee.
- (d) Lessee may furnish necessary laboratory equipment to American Petroleum Institute standards, in which event the inspector may make use thereof.

## § 2109. Record of Oil Run.

- (a) A memorandum of transfer shall be furnished the State for each run of oil from lessee's gauged tanks within 24 hours of the completion of such run
- (b) For each run of oil from the lessee's gauged tanks a copy of an official "Gauger's Report of Oil Run" will be furnished to the lessee.

## § 2110. Quantity Determination.

The volume of oil run shall be the volume corrected to 60 degrees F. according to the schedule "American Petroleum Institute Standard 2540, Table 6 (ASTMD–1250, Tables 6 and 24)."

## HISTORY

1. Amendment filed 12–27–73: effective thirtieth day thereafter (Register 73, No. 52)

## § 2111. Tests and Measurements of Gas.

- (a) Gasoline content tests shall be made by or for the lessee at least once a month and at such other intervals as appear to be necessary in the opinion of the inspector.
- (b) An inspector shall be permitted to witness any tests for the gasoline content of casinghead gas.
- (c) All tests and measurements of gas shall be in accordance with the procedure expressed by the California Natural Gas Association in Bulletins T.S. 351, T.S. 353, T.S. 354, and any revisions thereof.

## § 2112. Production Reports.

- (a) A daily report in the form prescribed by the Division of State Lands shall be furnished as required.
- (b) Monthly reports shall be furnished to the Division of State Lands as required.

## § 2113. Redrilling Operations.

No oil or gas well shall be redrilled except upon prior approval of the Division of State Lands. No application to redrill a well shall be approved unless it is shown that such redrill is necessary and in the public interest, and then only provided that:

- (a) No point in the redrilled portion of the well, including the bottom thereof, shall be more than 100 feet from the original hole;
- (b) No point in the redrilled hole shall be closer than 50 feet to the blanked off portion of any well not under the control of the drilling operator, other than the well to be redrilled;
- (c) All redrilling within an oil zone shall be done with any standard circulating medium as used in good engineering practice and as approved specifically by the Division of State Lands.

- (d) In case any point in the redrilled hole may come within 200 feet of the portion open to production of any well, other than the well to be redrilled, the applicant shall file with the Division of State Lands:
- (1) Written consent from the operator of each well within said 200 feet, waiving any objection to the proposed redrilling operations;
- (2) For each well, within said 200 feet, a surety bond, in an amount and for a period to be fixed by the commission, indemnifying the State against any loss, damage, claim, demand or action caused by or connected with the redrilling operations.

## § 2114. Drilling Operations.

- (a) No lessee shall drill an oil or gas well on state lands except on prior approval of the Division of State Lands and subject to the terms of the enabling statute and lease and then only provided that any well so drilled within any oil zone, shall be at least 50 feet away from the blanked off portions of any well not within control of the lessee and at least 200 feet away from the perforated section of any well not within the control of the lessee.
- (b) As a preliminary condition to approval of the drilling of a well, the lessee shall submit the proposed course of the well with vertical and horizontal projections of said course drawn upon graph paper to a scale of 100 feet to the inch. Upon completion of the well, the lessee shall file with the Division of State Lands a complete survey of the well, electric log, well history, driller's log and all core data.

## § 2115. Perforations, Plug Backs and Reperforations.

For any well to be perforated or plugged back and reperforated within 200 feet of any well not within the control of the lessee, lessee shall file with the Division of State Lands:

- (a) Written consent from any lessee having a well within said 200 feet, waiving any objection to the proposed plug back and reperforating operations, or;
- (b) For each well within 200 feet of any well or wells a corporate surety bond in an amount and for a period to be fixed by the commission, for each application, indemnifying the State against any loss, damage, claim, demand or action, caused by or connected with the plug back, perforation or reperforation operations.

## § 2116. Drilling Fluid.

All drilling, redrilling, perforating, or reperforating operations within any oil zones shall be done with any standard circulating medium as used in good engineering practice and as approved specifically by the Division of State Lands. Whenever, in the opinion of the inspector, circulation is lost the lessee shall immediately start pumping into the hold such circulation regaining media as are approved in good engineering practice and are most applicable, in the opinion of the inspector, to the zone in which the hole is located.

## § 2117. Washing Perforations.

Whenever the production of a well is determined to have been decreased because of the plugging of the well's perforations, the inspector may require the lessee to wash the well with a suitable perforation washing fluid.

## § 2118. Accounting for Royalty.

(a) No allowance shall be made for cost of dehydration unless specifically authorized in an existing lease, in which event the allowance shall be the actual cost of dehydration not to exceed 5 cents per net barrel of oil so dehydrated, or the allowance as specified in the lease, whichever is the lesser. Allowance for dehydration will be granted only after lessee has filed with the Division of State Lands an application in duplicate requesting the right to make deduction for dehydration, setting forth the method proposed to be employed and listing the equipment and value thereof installed exclusively for the dehydration of the oil produced from state oil and gas leases. After approval of the application, each operator shall file with the Division of State Lands before the tenth of the month subsequent to that for which dehydration deduction is requested, a detailed statement of the actual cost of dehydration proposed to be deducted from the gross royalty payable for the preceding month.

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(b) Tank bottoms and sump oil shipments are to be reported on the following value basis:

Shipments of 0.0 percent to 3.0 percent cut—quoted market price for applicable dry gravity.

Shipments of 3.1 percent to 15.0 percent cut—quoted market price for applicable dry gravity less 5 cents per gross barrel at 60 degrees F.

Shipments of 15.1 percent cut and up—quoted market price for applicable dry gravity less 15 cents per gross barrel at 60 degrees F.

- (c) All transfers of dry gas "Returned to Lease" or elsewhere, made by an operator for the use or benefit of other leases or of third parties, will be considered as sales under the terms of the lease.
- (d) Whenever under Section 2116 crude oil is used as a circulating medium, the operator shall be allowed a credit of 25 percent of the volume of any foreign circulating oil used. This credit shall be deducted from the total number of barrels produced from the well during the 30–day period immediately following the well's completion.
- (e) Whenever the State shall require the operator to use foreign oil to wash perforations of a producing well (Section 2117), the operator shall be allowed credit of 50 percent of the volume of the oil used in such washing as a deduction from the total number of barrel's produced from the well during the period of 30 days immediately succeeding such operations.
- (f) Subsection (d) and (e) shall not apply to cases where the volume of circulating oil lost exceeds 5,000 barrels for any one operation. Such cases will be the subject of specific determinations as to periods and the amount of credit to be allowed.
- (g) The value of oil used as a circulating medium or for washing perforations shall be that fixed by the lease for the quality and gravity of the oil so produced. Foreign oil is any oil not produced from the specific lease of the affected lessee.

## § 2119. Diligence of Operation.

All wells capable of producing oil, gas or other petroleum products in commercial quantities shall be operated continuously at the maximum efficient rate of recovery as determined by recognized engineering standards and in accordance with field production schedules acceptable to the Division of State Lands, unless written authorization is otherwise granted.

## § 2120. Conformance to Rules.

All offshore filled lands or piers or other structure or structures constructed for operations on a state oil and gas lease and all operations including drilling, whether from upland, littoral or offshore locations, shall conform with the rules and regulations of the commission in effect at the time of invitation for bids, in pursuance of which the lease may be awarded, and with the conditions as specified in the bid–lease form.

NOTE: Authority cited for Sections 2120 through 2124; Public Resources Code, Division VI, Sections 6103, 6105, 6108, 6216, 6301, 6873 and 6873.1.

## HISTORY

1. New Sections 2120 through 2124 filed 5-28-58 as an emergency; effective upon filing (Register 56, No. 10).

## § 2121. Suspension of Operations.

The lessee shall suspend any drilling and production operations, except those which are corrective, protective, or mitigative, immediately in the event of any disaster or of contamination or pollution caused in any manner or resulting from operations under a lease. Such drilling and production operations shall not be resumed until adequate corrective measures have been taken and authorization of resumption of operations has been made by the commission.

## § 2122. Lease Operation Offshore.

For all wells drilled from filled land or other drill sites or structure or structures located seaward of the ordinary high water mark, operations that may be conducted shall conform with the following:

- (a) The lessee shall remove the derrick from each well within sixty (60) days after lessee has ceased making use of such derrick in its operations on and with respect to such well.
- (b) In the discretion of the commission, all permanent operating sites shall be landscaped with shrubbery, or fenced, so as to screen from public view as far as possible the tanks, pumps or other permanent equipment. Such landscaping and shrubbery, or fencing, are to be kept in good condition.
- (c) Oil, tar, or other residuary products of oil, or any refuse of any kind from any well or works, shall be disposed of on shore in a dumping area in conformance with local regulatory requirements.
- (d) Suitable and adequate sanitary toilet and washing facilities shall be installed and maintained in a clean and sanitary condition at all times for the use of lessee's personnel.
- (e) All drilling and production operations shall be conducted in such manner as to eliminate as far as practicable dust, noise, vibration, or noxious odors
- (f) Pollution and contamination of the ocean and tide lands and all impairment of and interference with bathing, fishing, or navigation in the waters of the ocean or any bay or inlet thereof is prohibited, and no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean or any bay or inlet thereof.
- (g) No permanent filled lands, piers, platforms, or other fixed or floating structures in, on, or over the tide and submerged lands covered by the lease or otherwise available to the lessee shall be permitted to be constructed, used, maintained, or operated where service of less than 20 wells is provided for, without specific authority by the commission. Operating wells not meeting the foregoing requirement shall be completed below such elevation as may be required in each case by the United States, the State, or other competent authority, with the production piped along or below the floor of the ocean to such receiving points as the commission may determine or approve. For nonoperative wells the structures or facilities used for their drilling shall be removed to the satisfaction of the commission within ninety (90) days' time after such wells have been determined to be nonoperative unless a longer period is approved by the commission.

## § 2123. Lease Operations on Uplands.

For all wells drilled from an upland or littoral drillsite landward of the ordinary high water mark, operations that may be conducted shall conform with the following:

- (a) The lessee shall remove the derrick from each well within sixty (60) days after lessee has ceased making use of such derrick in its operations on and with respect to such well.
- (b) In the discretion of the commission, all permanent operating sites shall be landscaped with shrubbery, or fenced, so as to screen from public view as far as possible the tanks, pumps, or other permanent equipment. Such landscaping and shrubbery, or fencing, are to be kept in good condition.
- (c) All drilling and production operations shall be conducted in such manner as to eliminate, as far as practicable, dust, noise, vibration or noxious odors.
- (d) Suitable and adequate sanitary toilet and washing facilities shall be installed and maintained in a clean and sanitary condition at all times for the use of lessee's personnel.
- (e) No sign shall be constructed or erected, maintained or placed on the premises except those required by law or ordinance to be displayed in connection with the drilling or maintenance of the well.
- (f) Pollution and contamination of the ocean and tide lands and all impairment of and interference with bathing, fishing, or navigation in the waters of the ocean or any bay or inlet thereof is prohibited; and no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean or any bay or inlet thereof.

(g) Oil, tar, or other residuary products of oil, or any refuse of any kind from any well or works, shall be disposed of onshore in a dumping area in conformance with local regulatory requirements.

## § 2124. Surrender of Leased Premises.

Each lease shall provide that at the expiration of the lease or sooner termination thereof the lessee shall surrender the premises leased, with all permanent improvements thereon, in good order and condition, or, at the option of the commission and as specified by the commission, the lessee shall remove such structures, fixtures and other things as have been put on the lease by the lessee, all removal costs to be borne by the lessee, subject to the lessee's right to remove his equipment as provided in the statutes. Notwithstanding any provision of these regulations, the lessee shall have the right to remove any and all drilling and producing platforms and other oil field development and producing equipment having a re—use or salvage value.

# Article 3.2. Oil and Gas Drilling Regulations

## § 2125. General Provisions.

- (a) This Article 3.2 pertains to oil and gas drilling operations on State oil and gas leases located on State tide and submerged lands under the jurisdiction of the State Lands Commission, and is applicable to operations conducted from mobile rigs, fixed offshore structures and upland locations serving these leases.
- (b) In addition to complying with Division 6 of the California Public Resources Code and with Title 2, Division 3, Chapter 1 of the California Administrative Code, the lessee shall comply with all applicable laws, rules and regulations, now or hereafter promulgated, of the United States and of the State of California and of any respective political subdivision thereof, including, but not limited to, those of the Division of Oil and Gas, the Department of Fish and Game, the Division of Industrial Safety, the State Water Resources Control Board, the Regional Water Quality Control Boards, the California Coastal Commission, and any respective successors thereto.
- (c) All drilling operations conducted on State oil and gas leases shall be carried on in a proper and workmanlike manner in accordance with accepted good oilfield practice.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301, and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

## HISTORY

 New Article 3.2 (Sections 2125–2128) filed 6–13–80; effective thirtieth day thereafter (Register 80, No. 24).

## § 2126. Definitions.

- For purposes of this Article 3.2, the following definitions shall apply:
  (a) "Drilling operations" include, but are not necessarily limited to, exploratory and development well drilling, redrilling and deepening of a well and well abandonment.
- (b) "Staff" shall mean the Executive Officer or other duly authorized member of the staff of the State Lands Commission.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

## § 2127. Administration.

- (a) The Staff shall administer this Article 3.2 and shall thereby seek to provide for the prevention and elimination of any contamination or pollution of the ocean and tidelands, for the prevention of waste, for the conservation of natural resources, and for the protection of human health and safety and of property.
- (b) The Commission has designed these regulations in as great detail as possible. However, the Commission recognizes that situations may arise which are not specifically covered by this Article 3.2 and that emergency situations may arise which will require immediate decisions by the

Staff. In such situations, the Executive Officer or his designee may authorize or direct appropriate procedures to be followed.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152. Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

## § 2128. Drilling Regulations.

- (a) General Provisions.
- (1) All drilling for oil and gas on State oil and gas leases shall be conducted in accordance with the provisions of this Section 2128.
- (2) Prior to the commencement of drilling operations on any well, each well drilling proposal shall be approved by the Staff.
- (3) Prior to the commencement of drilling operations on any well, the lessee shall obtain all necessary permits and approvals required by all applicable laws and regulations. The lessee shall file copies of those permits and approvals and related documents with the State Lands Commission prior to the commencement of drilling operations. The lessee shall abide by the terms of those permits and approvals, including but not limited to, any required notifications prior to the lessee's commencement of drilling operations.
- (b) Field Drilling Rules. When sufficient geological and engineering information has been compiled on a lease from exploratory and initial development well drilling, the lessee may make application to the Staff for the establishment of field drilling rules. After the Staff has established field drilling rules, subsequent development well drilling shall be drilled in accordance with these rules. Field drilling rules may include but may not be limited to those relative to casing setting depths, casing cementing requirements and blowout prevention equipment.
- (c) Well Site Investigation. Prior to commencing drilling operations on any well from a mobile drilling rig, the lessee shall investigate the conditions of the ocean floor and near sub—bottom including sediment characteristics in the area of the proposed well site. The investigation shall be adequate to (1) ascertain the presence of shallow geological anomalies and gather other information to be used as an aid in the design of a safe well drilling and casing program, and (2) determine the presence and location of significant cultural resources. A report of the findings and provisions for mitigating any problems disclosed by the investigation shall be provided to and must be approved by the Staff. Where a number of wells are proposed to be drilled, the area of study may be expanded to cover all the well sites. The plan(s) of investigation shall be in accordance with guidelines provided by the Staff.
- (d) Drilling Program. Prior to drilling a well the lessee shall submit with the drilling proposal a detailed well-drilling program to the State Lands Commission that shall include but may not be limited to, the following information:
- (1) Well location map; proposed well course; detailed drilling procedures; casing and cementing program; blowout prevention program; drilling mud program; directional survey program; electrical logging, mud logging and sampling programs; and well testing procedures.
- (A) In all exploratory well drilling proposals, the lessee shall provide in the detailed drilling procedures a description and depth of the possible drilling hazards that might be encountered in drilling the well. The drilling hazards shall include, but may not be limited to, possible unstable bottom sediments, shallow gas—charged sediments, zones of lost circulation, oil and gas bearing zones, and abnormal pressured zones.
- (B) In drilling operations using a mobile drilling rig, the lessee shall provide in the detailed drilling procedures an operational program which describes procedures and personnel assignments to be employed for rig and personnel safety while drilling the hole for and running the surface casing string(s). The program shall cover, but may not be limited to, requirements and procedures for testing and use of the diverter system; establishment of safe penetration rates; monitoring of mud returns for indication of gas and loss of circulation; evaluation of drilling breaks; evaluation of severity of gas shows or kicks; stand—by liquid mud and use in well control; emergency plugging of the well; safeguards while removing the drilling riser for running and cementing the casing string(s); pre-

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cautionary measures for fire prevention; and, emergency movement of drilling rig off location.

- (2) Specifications and performance data of drilling rig; critical operations and curtailment plan; oil spill contingency plan, and hydrogen sulfide contingency plan.
  - (e) Well Casing Requirements.
- (1) All wells shall be cased and cemented in such a manner as to protect all zones that contain oil, gas, or fresh water, so as to provide well control during drilling operations.
- (2) The casing setting depths shall be based upon all relevant geological and engineering factors, including the presence of shallow geological anomalies, the presence or absence of hydrocarbons, formation fracture gradients, formation pore pressures, water depth, and zones of lost circulation or of other unusual characteristics. Casing setting depths below the second surface casing shall be justified by calculations of the competency of the preceding casing seat to withstand anticipated mud weights, as well as the pressure generated by simulated well kicks from known or potential gas bearing zones, taking into consideration actual or estimated reservoir pressures, formation fracture gradients, minimum programmed mud weights and anticipated kick volumes.

In situations where formation fracture gradients are not known, a formation leak-off or predetermined equivalent mud weight test shall be conducted to obtain estimated formation fracture gradients for use in the calculations. These tests shall be conducted after drilling a maximum of 50 feet of new hole below the shoe of the second surface casing and intermediate casing strings. Additional tests should be performed as the drilling progresses in order to verify the competency of the formation to withstand anticipated pressures, and to further refine casing setting depths. The results of all the tests shall be recorded on the driller's log and reported to the Staff.

The known and estimated factors and calculations used to determine the casing setting depths, as well as the casing design safety factors and specifications shall be shown in the casing and cementing program required in Section 2128(d)(1).

- (3) The lessee shall utilize current technological methods during drilling operations to aid in the prediction of possible abnormal pressured zones in order to minimize the potential for the development of a formation flow or kick.
- (4) All casing shall be new pipe or the equivalent and shall be inspected by the lessee in a manner approved by the Staff. The inspection shall be sufficient to detect transverse and longitudinal defects, to determine wall thickness, pipe eccentricity and grade uniformity, and shall include a 100 percent thread check of the exposed threads. Casing inspection reports shall be maintained by the lessee in its district office for a period of five years, and shall be available to the Staff.
- (5) Except in cases where casing requirements have been established by field drilling rules or where geological and engineering factors indicate that a different program should be used, the following casing and setting-depth requirements shall be included in all well casing programs. All depths refer to true vertical depth (TVD) below the ocean floor or ground level unless otherwise specified. In order of normal installation the casing strings are identified as conductor, first and second surface, intermediate, and production casing.
- (A) Conductor Casing (Referred to as drive or structural casing in USGS Order No. 2). This casing shall be set by drilling, driving, or jetting to a depth of approximately 100 feet below the ocean floor or ground level in order to support unconsolidated sediments and thereby provide hole stability for initial drilling operations. If drilled or jetted in, the fluid circulated to the ocean floor shall be of a type that will not pollute the ocean environment.
- (B) First Surface Casing (Referred to as conductor casing in USGS Order No. 2). This casing shall be set at a depth between 300 feet and 500 feet below the ocean floor; provided, however, that this casing shall be set before drilling into shallow formations known to contain oil or gas or, if unknown, upon encountering such formations.
- (C) Second Surface Casing (Referred to as surface casing in USGS Order No. 2). This casing shall be set at a depth between 1,000 feet and

1,200 feet below the ocean floor, but may be set as deep as 1,500 feet in the event the first surface casing is set at least 450 feet below the ocean floor

(D) Intermediate Casing. Intermediate casing shall be set in accordance with the requirements of Section 2128(e)(2). Notwithstanding these requirements, the Staff may specify the use and the setting depth of the intermediate casing. Also, protective casing shall be set at any depth below the second surface casing when required by well conditions such as abnormal pressure, loss of circulation, hole problems, and for the protection of productive zones while performing deeper drilling.

A blank liner may be used as intermediate casing provided the existing casing string is of adequate strength for conducting deeper drilling. The top of the liner shall overlap a minimum of 100 feet into the next larger casing string. The lap shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and next larger string has been achieved. The test shall be recorded on the driller's log. If the test indicates an improper seal, the top of the liner shall be squeezed with cement and retested.

- (E) Production Casing. This casing shall be set before completing the well for production. A blank or combination liner may be run and cemented as production casing providing the existing casing string is of adequate strength for the safe conduct of production operations. The overlap requirement and the testing of the seal between the liner top and next larger casing string shall be conducted as specified in Section 2128(e)(5)d for intermediate liners. The surface casing shall not be used as production casing.
  - (f) Casing Cementing Requirements.
- (1) The lessee shall utilize appropriate cementing technology and casing equipment in order to achieve adequate cement fillup and bonding on all casing cementing operations.
- (2) The conductor (if drilled or jetted) and surface casing strings shall be cemented with sufficient cement to fill the annular space back to the surface or ocean floor. Cement fill shall be verified by the observation of cement returns. The cementing operation may be considered adequate if cement is circulated to the surface or ocean floor within the range of the calculated hole volume. In the event that cement returns are not obtained or cement channeling occurs during cementing of the surface casing strings, the lessee shall run a temperature and/or cement bond survey and/or pressure test the casing shoe to evaluate the adequacy of the cement job. If the casing string is thereby determined to be inadequately cemented, the lessee shall recement the casing string or perform other operations as approved by the Staff to ensure the competency of the cement job.
- (3) The intermediate casing string(s) shall be cemented with sufficient cement to fill the annular space a minimum of 200 feet into the preceding larger casing string. The protective and production casing strings shall be cemented in a manner such that cement will cover or isolate zones of unusually high or low pressure and zones containing hydrocarbons. Sufficient cement shall be used to provide annular fillup at least 500 feet above the zones to be covered or isolated or above the casing shoe in cases where zonal coverage is not required. A cement bond survey shall be run following primary cementing of the intermediate, protective, and production casing strings to aid in determining whether each string is cemented in accordance with this Section 2128(f)(3). If a casing string is thereby determined not be adequately cemented, the lessee shall recement the casing string as necessary to achieve annular fillup and isolation of zones. If following a primary cementing operation, it has been determined without the aid of a cement bond survey that remedial cementing is necessary, the running of such survey may be deferred until after recementing. The lessee shall verify the adequacy of the remedial cementing operations by running a cement bond survey or by other methods approved by the staff.
- (4) A copy of each temperature and cement bond survey shall be filed immediately with the Staff.
- (5) After cementing any of the above casing strings, drilling shall not be commenced until after a time lapse of:

- (A) 24 hours; or
- (B) Sufficient time for the cement to reach a compressive strength of at least 500 pounds per square inch for the bottom 20 percent of the casing string. To determine the time that a minimum compressive strength of 500 pounds per square inch has been attained, the operator shall pretest the cement slurry at the projected hole temperature and pressure at the cementing depth in accordance with API recommended procedures.
- (g) Pressure Testing of Casing. Prior to drilling out the plug after cementing, all casing strings except the conductor casing shall be pressure tested to at least the minimum pressure shown in the table below. In the event that the cement is under–displaced, the pressure test shall be conducted after drilling out cement to at least the float collar depth. This test shall not exceed 70% of the minimum internal yield pressure for the casing. If during the test, the pressure declines more than 10 percent in 30 minutes, or if there is any indication of a leak, corrective measures shall be taken so that a satisfactory test is obtained.

Minimum Surface Pressure Test (psi)
1,500 or 0.2 psi/ft., whichever is greater
1,500 or 0.2 psi/ft., whichever is greater
1,500 or 0.2 psi/ft., whichever is greater
1,500 or 0.2 psi/ft., whichever is greater

All casing pressure tests shall be recorded on the driller's log.

(h) Directional Surveys. Each well shall be drilled in accordance with the approved well course.

Except as otherwise provided in field drilling rules, all wells drilled into the leased lands shall be directionally surveyed as drilling progresses giving both inclination and azimuth measurements. Directional survey shots shall be taken below the setting depth of the conductor casing string at intervals not exceeding 250 feet during the normal course of drilling and at intervals not exceeding 60 feet in angle changing portions of the hole. A multishot directional survey shall be run at casing setting depths and/or at total depth.

Results of directional and inclination survey shots shall be reported promptly to the Staff. Copies of all composite and multishot directional surveys shall be filed with the Staff.

(i) Blowout Prevention Equipment Requirements. Blowout prevention equipment systems consist of several component systems that function to operate the blowout preventers and to assist in well control under varying rig and well conditions. These systems include the blowout preventers, closing unit, kill and choke lines, choke manifold, fill—up line, diverter, marine riser, and auxiliary equipment.

Blowout prevention equipment shall be installed, used, maintained, and tested in a manner necessary to assure well control throughout the drilling, completion or abandonment of a well.

All portions of a blowout prevention system shall be designed so that alternate methods of well control are available in the event of failure of any one portion of the system. If one component of the system that is vital to well control becomes inoperative, drilling operations shall be suspended as soon as possible without danger to the well until the inoperative equipment is repaired or replaced.

Unless stated otherwise below, the following requirements pertaining to blowout prevention equipment shall apply to both surface and subsea equipment installations.

- All blowout prevention systems shall include the following:
- (1) Blowout Preventers.
- (A) There shall be a specified minimum number of annular and ramtype preventers on each casing string as tabulated below. On surface installations one preventer shall be a blind ram and on subsea installations one preventer shall be a blind shear ram. Pipe rams shall be provided to fit the pipe in use. Locking devices shall be provided on all ram-type preventers. On subsea installations a remotely operated or automatic locking system shall be required.

1. Surface Installations:	
Conductor	stem
Conductor 1-Diverter Sys First Surface 1-Ann	nular
1–Pipe R	
f Diad	D
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2. Subsea Installations:	
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1-Blind Shear I           Second Surface         2-Ann	ıular
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1–Blind Shear I	Ram
Intermediate 2–Ann	ıular
3–Pipe R	
1-Blind Shear I	Ram

- (B) In floating drilling operations a bypass valve located on the bottom of the riser may be employed to direct returns to the ocean floor when the formation competency at the conductor setting depth is not adequate to permit circulation of drilling fluids to the vessel.
- (C) All blowout preventers and wellhead assemblies shall have a working pressure exceeding the anticipated surface pressure to which it may be subjected. The lessee shall submit in the blowout prevention program required in Section 2128(d) (1) the anticipated surface pressure of the well and its method of determination for each casing string.
- (D) Notwithstanding the working pressure requirements determined in (1)b above, all blowout preventers that are used while drilling the hole for surface or intermediate casing shall have a minimum working pressure rating of 2000 psi (2M), except for diverter systems or annular preventers used on the conductor.
- (2) Closing Unit System. The closing unit system shall incorporate the following general specifications:
- (A) An accumulator unit having a minimum usable hydraulic fluid operating volume, with pumps inoperative, to close all blowout prevention units and still retain a 50 percent volumetric operating reserve at 1200 psi.
- (B) A fluid reservoir with a capacity equal to approximately twice the usable fluid capacity of the accumulator system.
- (C) The capability to close each ram type preventer within 30 seconds. Closing time shall not exceed 30 seconds for annular preventers size 20 inches and smaller, and 45 seconds for annular preventers larger than 20 inches.
- (D) A dual pump system having a discharge pressure equivalent to the rated working pressure of the closing unit. Each pump system shall have an independent alternate source of power and be equipped with automatic switches that activate the pumps when the closing unit manifold pressure drops below 90 percent of the accumulator operating pressure. With the accumulator system removed from service, each pump system shall be capable of closing the annular preventer on the drill pipe being used, plus be capable of opening the hydraulically operated choke line valve and of obtaining a minimum of 200 psi pressure above accumulator precharge on the closing unit manifold within two minutes or less.
- (E) There shall be one master control panel which contains a manifold capable of operating and monitoring all of the functions of the closing unit system. All of the controls and gauges in the panel shall be clearly marked and arranged in the same sequence as the valves and the other equipment in the blowout preventer stack which they control. In addition to the master control panel, there shall be a second "remote" or 'mini" panel capable of operating all of the functions of the closing unit system. One of the two panels shall be located at the driller's station and the other at least 50 feet from the centerline of the wellbore. Each of the two control panels shall be capable of controlling the hydraulic manifold but the ac-

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tual hydraulic manifold shall be located away from the rig floor. The driller's control panel shall have a power source independent of the accumulator pump system, or be designed so that in the event of complete destruction of the panel, inter–connecting cable or hose, there would be no interference with the operation of the accumulator pump system.

- (F) In addition to the above requirements, closing unit systems for subsea blowout equipment installations shall include the following:
- 1. The blowout preventer stack shall be equipped with duplicate subsea control pods, each of which shall contain all of the required pilot valves and regulators necessary to operate all blowout preventer stack functions. The control hose bundles may be hydraulic or electro—hydraulic. If hydraulic, the pilot hoses contained within the bundle shall have a minimum internal diameter of 3/16 inch and the power hose shall have a minimum internal diameter of 1 inch. If electro—hydraulic, the electric signal cables may be run integral with the hydraulic power hose or may be run separately. The hose reels shall be so designed that a minimum of four subsea hydraulic functions are operable while running or pulling the blowout preventer stack.
- 2. The subsea blowout preventer stack shall contain an accumulator volume sufficient to close one annular-type preventer and to open the riser connection without recharge from the surface.
- 3. The Staff may require that the subsea blowout preventer stack be equipped with an emergency shut—in system that on signal from the surface, will shut in the well in the event the drill vessel loses contact with the stack and the primary blowout prevention control system is lost.
- (3) Kill and Choke Lines. The blowout preventer stack shall contain a drilling spool or equivalent connections in the blowout preventer body to provide for separate kill and choke lines. Each kill and choke line shall have a master valve located next to the stack followed by a control valve. Both valves shall be full-opening. The master valve shall not be used for normal opening or closing on flowing fluids.

On surface installations, the control valve on the choke line shall be remotely controllable. On subsea installations, the valves on both the kill and choke lines shall be hydraulically operated. One of the valves on each line shall be "fail—safe" in the closed position. The kill and choke lines on the subsea installation shall be connected through the surface choke manifold to permit pumping into the well through either line.

All connections for valves and fittings shall be flanged, welded or clamped. All lines, including flexible lines, valves and flow fittings shall have a working pressure rating at least equal to the rated working pressure of the blowout preventer stack in use.

On surface installations the kill line, valves and fittings shall have a minimum diameter of 2 inch nominal. The choke line, valves, and fittings shall have a minimum diameter of 3 inch nominal. On subsea installations both kill and choke line assemblies shall have a minimum diameter of 3 inch nominal.

(4) Choke Manifold. A choke manifold shall be installed on the drilling rig and be so located that it is readily accessible to drilling personnel.

The choke manifold design shall consider such factors as anticipated formation and surface pressures, method of well control to be employed, surrounding environment, corrosivity, volume, toxicity, and abrasiveness of fluids.

The portion of the manifold subject to well and/or pump pressure shall have a working pressure equal to the rated working pressure of the blow-out preventer stack in use. All connections for valves and fittings shall be flanged, welded or clamped.

The choke manifold shall be equipped with a minimum of two adjustable chokes, one of which shall be remotely controlled. These chokes shall be isolated by at least one valve on each side to allow for repairs or replacement. All valves shall be full-opening. There shall be at least one bleed line with a minimum diameter of 3 inch nominal. The lines downstream of the chokes shall have a minimum diameter of 2 inch nominal. All lines shall be securely anchored and connected in such a manner as to permit flow to a mud/gas separator, vent lines, or to production facilities or emergency storage. Two vent lines shall be provided if necessary

to accomplish the downwind diversion. The choke manifold shall be equipped with accurate pressure gauges so that all control operations can be properly monitored.

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The choke manifold for a subsea installation shall be equipped with duplicate adjustable choke systems to permit control through either the choke or kill line in addition to a remotely controlled adjustable choke, and to provide tie—is for both drilling fluid and high pressure pump systems.

A choke control station shall be provided that includes all monitors necessary to furnish a complete overview of the well control situation.

- (5) Fill-up Line. A fill-up line shall be installed on top of the blowout preventer stack on surface installations and on top of the marine riser on subsea installations.
- (6) Diverter System. A diverter system shall be installed on the well prior to drilling below the conductor casing for the purpose of directing flowing formation fluids from the well safely away from the rig and personnel.

Low-pressure annular preventers, rotating heads or special diverters may be used for the diversion of well fluids. All such equipment shall be able to pack-off around the kelly, drill string and casing if run through the diverter. There shall be two diverter vent lines to permit diversion of well fluids while minimizing back pressure on the well. All vent lines shall be at least 6 inch nominal diameter unless otherwise justified by engineering analysis. The two vent lines shall be installed in a manner to accomplish downwind diversion. Valves on the vent lines shall be full-opening and so designed that the proper valve automatically opens when the diverter is activated or can be opened by remote control from the driller's control panel. A description and diagram of the diverter system and information justifying the sizing of vent lines shall be included in the blowout prevention program required in Section 2128(d)(1).

- (7) Marine Riser. The marine riser system and its component parts that are employed in drilling operations from mobile drilling rigs shall conform to the design, operation, inspection and maintenance specifications set forth in Sections 6B and 11 of the "API Recommended Practices for Blowout Prevention Equipment Systems, API RP 53, First Edition, February 1976, reissued February 1978," or subsequent revisions thereto that are approved by the Staff.
  - (8) Auxiliary Equipment.
- (A) The following auxiliary equipment shall be provided and maintained as operationally ready at all times. Any equipment that may be subjected to well pressures shall have a working pressure rating at least equal to the rated working pressure of the blowout preventer stack in use.
- 1. A kelly cock shall be installed below the swivel and a full-opening lower kelly valve shall be installed below the kelly. The lower kelly valve shall have an outer diameter such that it may be run through the blowout preventers and the last casing string cemented in the well. A wrench to fit each valve shall be maintained at a conspicuous location readily accessible to the drilling crew.
- 2. A full-opening drill pipe safety valve shall be available on the rig floor at all times and shall be equipped to screw into any drill string member in use. This valve shall have an outer diameter such that it may be run through the blowout preventers and the last casing string cemented in the well.
- 3. An inside blowout preventer, drill pipe float valve, or drop—in check valve shall be available on the rig floor at all times for use in kick—control and stripping operations. The valve, sub, or profile nipple shall be equipped to screw into any drill string member in use.
- 4. A safety valve shall be readily available on the rig floor and shall be equipped to screw into the casing string that is being run into the well.
- (B) A subsea test tree shall be used in the blowout preventer stack while performing drill stem or production tests from mobile drilling rigs.
- (j) Pressure Testing, Operational Testing, Inspection and Maintenance of Blowout Prevention Equipment.
  - (1) Pressure Testing of Blowout Prevention Equipment.

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- (A) Ram-type blowout preventers and related control equipment used in surface and subsea installations shall be tested at the rated working pressure of the preventer stack, wellhead, or 70% of the internal yield pressure of the casing, whichever is the lesser. Annular-type preventers shall be tested at 70 percent of this pressure requirement. Both types of preventers and related control equipment shall be tested at low pressure, 200–300 psi. These tests shall be performed as follows:
  - 1. When installed on the well.
  - 2. After setting each casing string.
  - 3. Before drilling into any known or suspected high pressure zone.
  - 4. At least once a week while drilling.
- 5. Following repairs or replacement that necessitates breaking any pressure seal in the system.
- (B) In addition, the subsea blowout prevention system shall be stumptested on the drilling rig to the applicable rated working pressure before the equipment is installed on the well. The test record shall include the opening and closing times and the hydraulic fluid volumes required for each function.
- (C) Diverters shall be tested to their rated working pressure when installed on the well.
- (D) The blowout preventer equipment pressure testing procedure shall be alternated between control panel stations and shall be conducted at staggered intervals in order to allow each drilling crew to perform the tests. On subsea installations alternate control pods may be used on successive test periods.
- (E) The kelly cock, lower kelly valve, drill pipe safety valve, and inside blowout preventer shall be tested at the same time and pressure as the ram-type blowout preventers.
- (F) The testing of all blowout preventer equipment shall be properly recorded in the driller's log.
  - (2) Operational Testing of Blowout Prevention Equipment.
- (A) Ram-type and annular-type blowout preventers and diverters shall be actuated to test for proper functioning on each round trip of the drill pipe, but not more than once every 24 hours during normal drilling operations. Each choke manifold valve and choke, subsea kill and choke line valve, kelly cock, lower kelly valve, and drill pipe safety valve shall be operated daily.
- (B) During the operational tests the choke manifold and subsea kill and choke line valves shall be flushed with water to ensure that plugging does not occur. The diverter and vent lines shall be checked daily for plugging as a result of drill cuttings or other debris.
- (C) The actuation of preventers and other remotely controlled equipment shall be alternated between control panel stations and shall be conducted at staggered intervals to allow each drilling crew to operate the equipment. On subsea installations alternate control pods may be used on successive operational tests.
- (D) A closing unit pump capability test, and accumulator precharge-pressure and closing tests shall be conducted before testing the blowout preventer stack on a well. The tests shall be performed in accordance with the requirements set forth in Section 5A of the "API Recommended Practices for Blowout Prevention Equipment Systems, API RP 53, First Edition, February 1978," or subsequent revisions thereof that are approved by the Staff.
- (E) The emergency shut—in system for the subsea blowout preventer stack described in Section 2128(i)(2)F3. shall be tested when installed on a well and at least once every two weeks thereafter. In the test, the emergency shut—in system shall activate at least one blowout preventer function.
  - (F) All operational tests shall be properly recorded in the driller's log.
- (3) Inspection and Maintenance of Blowout Prevention Equipment. All blowout prevention equipment systems shall be inspected and maintained in accordance with the manufacturer's recommended procedures. All systems shall be visually inspected at least once each day. Subsea blowout preventer and riser systems may be inspected by use of divers or television equipment. Any necessary equipment repair or replacement

shall be accomplished without delay; however, full consideration shall be given to well safety before starting any work.

- (k) Supervision and Training.
- (1) The lessee shall provide on–site company supervision (company toolpusher) of drilling operations on a 24–hour basis. At least one member of the drilling crew or the toolpusher shall maintain rig–floor surveillance at all times, unless the well is secured with blowout preventers, bridge plugs, or cement plugs.
- (2) Except as provided below in Section 2128(k)(3), the lessee and drilling contractor personnel engaged in drilling operations on State oil and gas leases located on State tide and submerged lands shall be trained and qualified in well–control equipment, operations and techniques in accordance with the provisions of the USGS Outer Continental Shelf Standard "Training and Qualifications of Personnel in Well–Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS–OCS–T1), First Edition, December 1977, and subsequent revisions thereto that are approved by the Staff. Written certification shall be filed with the Staff on compliance with this provision before commencing drilling operations.
- (3) Additional requirements to be included in subsection 3.6 of document GSS-OCS-T1 aforesaid are:
- (A) A well control drill plan shall be prepared by the lessee for each well drilling proposal and shall be submitted for Staff approval along with the blowout prevention program that is required in Section 2128(d)(1). The plan shall also stipulate the total time allotted for the crew to complete each type of operational drill.
- (B) Well control drills shall be held for each crew on a daily basis until each crew demonstrates its ability to effect proper closure of the well within the time established by the well control drill plan. Thereafter, the drills may be held on a weekly basis for each crew as set forth in subsection 3.6 of document GSS-OCS-T1 aforesaid.
  - (1) Hydrogen Sulfide.
- (1) When drilling operations are planned which will penetrate reservoirs known or expected to contain hydrogen sulfide ( $H_2S$ ), or in those areas where the presence of  $H_2S$  is unknown, or upon encountering  $H_2S$ , the preventive measures and the operating practices set forth in U.S.G.S. Outer Continental Shelf Standard, "Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment," No. 1 (GSS–OCS–1) Second Edition, June 1979, or subsequent revisions thereto that are approved by the Staff, shall be followed.
- (2) The lessee shall submit to the Staff for its approval, a hydrogen sulfide contingency plan for each well proposal as required in Section 2128(d)(2).
- (m) Mud Program. The characteristics, use, and testing of drilling mud properties, and the related procedures to be followed during drilling operations, shall be designed so as to prevent loss of well control. Adequate quantities of mud materials shall be maintained at the drill–site and shall be readily accessible for use in well control.
  - (1) Mud Control
- (A) Before starting out of the hole with the drill pipe, the mud shall be circulated with the drill pipe just off bottom, until the mud is properly conditioned. Proper conditioning requires, at a minimum, circulation to the extent that the annulus volume is displaced to insure that the hole is clean and zonal pressures are being controlled by the mud column. When pulling the drill pipe, the annulus shall be filled with mud so that the mud level does not drop below a calculated depth of 100 feet. The number of stands of drill pipe and drill collars that may be pulled before stopping to fill the hole and their equivalent mud displacement volumes shall be calculated and posted at the driller's station. A mechanical, volumetric, or electronic device shall be utilized for accurate measurement of the amount of mud used to fill the hole.
- (B) A degasser and mud/gas separator shall be employed on all wells unless not required by field rules. This equipment shall be installed on the mud system prior to commencement of drilling operations, and shall be maintained for use throughout the drilling and completion of the well.

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- (2) Mud Quantities.
- (A) The lessee shall include in the drilling mud program a tabulation by well depths of the minimum quantities of mud material to be maintained at the drill—site. The minimum quantities of mud material required shall be at least equal to the capacity of the downhole and active surface mud system. Sufficient weight material shall be maintained in order to condition the reserve mud to the maximum density programmed.
- (B) A daily inventory of the mud materials shall be recorded and maintained at the drill-site. Drilling operations shall be suspended whenever the required minimum quantities of mud materials are not maintained at the drill-site.
  - (3) Mud-Testing Equipment.
- (A) Mud-testing equipment shall be maintained on the drilling rig at all times, and mud tests that are consistent with good operating practice shall be performed at least once each 8-hour period while drilling, or more frequently if conditions warrant.

Continuous mud-logging equipment shall be employed on all exploratory drilling.

- (B) The following mud-system monitoring equipment shall be installed (with indicators located at the driller's station) and used throughout the period of drilling, after setting and cementing the conductor casing:
- 1. Recording mud pit level indicator (volume totalizing type) to determine mud pit volume gains and losses. This indicator shall include a visual audio warning device.
- 2. Mud-volume measuring device for accurately determining mud volumes that are required to fill the hole on trips.
- 3. Mud-return or full-hole indicator to determine when returns have been obtained, when returns occur unintentionally, and to determine that returns are approximately equal to the pump discharge rate.
  - 4. Gas-detection equipment to monitor the drilling mud returns.
  - (n) Drilling Practices.
- (1) The volume of mud required to fill the hole shall be carefully observed, and if at any time there is an indication of swabbing or influx of formation fluids, the necessary safety device(s) shall be installed on the drill pipe. The drill pipe shall be run to bottom and the mud properly conditioned to stabilize the well. The mud shall not be circulated and conditioned except on or near bottom, unless well conditions prevent the running of pipe to bottom.
- (2) The lessee shall post at the driller's station, for each casing string, the maximum pressure that is allowed to build up against the blowout preventers before controlling the pressure by bleeding through the choke.
- (3) The rate of pulling or running drill pipe shall be controlled to ensure that the hole is not being swabbed or that formations exposed to the well bore will not be broken down. Special precautions shall be observed to prevent swabbing when full-hole tools are employed.
- (4) All formation fluid that is produced during drillstem testing shall be directed to the producing or test facilities, and that remaining in the drill string after drillstem testing shall be reverse—circulated from the drill pipe. The mud shall be adequately conditioned prior to pulling the drillstem test tools.
- (o) Drilling Inspection. Staff may perform inspections of drilling operations on each rig to verify that the operations are being conducted in accordance with these regulations and the approved well-drilling program.
- (p) Redrilling and Deepening. Drilling operations to redrill or deepen a well shall be conducted in accordance with the foregoing drilling regulations and the additional regulations listed below.
- (1) A well shall not be redrilled or deepened unless it is determined that the casing exposed in the well will provide adequate strength for the proposed drilling and for subsequent production operations. Where well conditions permit, a casing inspection survey, indicating remaining wall thickness and internal diameter, shall be run to determine the condition of the casing and whether or not it is of adequate strength.
  - (2) If it is not possible to run a casing inspection survey, the casing

shall be pressure tested to at 70% of minimum internal yield pressure or 1.25 times the anticipated surface pressure that it might be subjected to either during the drilling operations or subsequent production operations (including injection), or to the amount stipulated in Section 2128(g), whichever is greater.

- (3) If the casing inspection survey indicates that the casing strength is adequate, then the casing also shall be pressure tested as stipulated above in Section 2128(p)(2).
- (4) In the event it is determined that the condition of the casing is inadequate, drilling shall not be initiated until corrective measures approved by the Staff are taken by the lessee. This shall include testing of the casing to the maximum pressure stipulated above in Section 2128(p)(2).
- (5) A copy of the casing inspection survey shall be filed immediately with the Staff.
- (6) Prior to redrilling or deepening a well the lessee shall demonstrate to the Staff that the casing is adequately cemented above the point of new drilling. In the event it is thereby determined that the casing is not adequately cemented, the lessee shall properly recement the casing. The lessee shall verify the adequacy of the remedial cementing operations by running a cement bond survey or by other methods approved by the Staff.
- (7) Prior to redrilling a well, all oil, gas and water zones exposed in the well below the kickoff depth shall be properly abandoned in accordance with the plugging and abandonment regulations in Section 2128(q).
- (8) If a well is to be redrilled or deepened to a zone(s) having a pressure significantly higher or lower than that of the shallower producing zone(s), which drilling might cause lost circulation and thereby endanger the well, the shallower producing zones shall be squeeze cemented or cased and cemented, prior to penetrating the lower zone(s).
- (q) Plugging and Abandonment of Wells. Before any work is commenced to abandon any well, the lessee shall file with the Staff a written notice of intention to abandon the well. The notice shall show the condition of the well and proposed method of abandonment. Written approval shall be obtained from the Staff prior to commencement of abandonment operations.

In the case of a newly drilled dry hole or where other approved operations on a well are in progress, the lessee may commence plugging operations by securing oral approval from the Staff as to the abandonment procedure and the time that plugging operations are to begin. Prior to requesting oral approval, the lessee shall furnish the Staff a description of the mechanical condition of the well, an electric log, a description of all oil and gas shows and tests, and any other well data necessary for review of the abandonment procedure. The lessee shall immediately file a written notice with the Staff of its intention to abandon the well in confirmation of the approved abandonment procedure.

The lessee shall plug and abandon all wells in accordance with the following minimum requirements:

- (1) Permanent Abandonment.
- (A) Isolation of Zones in Open Hole. In open hole portion of the well, cement plugs shall be spaced to extend from 100 feet below to 100 feet above each oil or gas bearing zone or zone that is productive of hydrocarbons elsewhere in a field, and a cement plug at least 200 feet long shall be placed across the intrazone freshwater–saltwater interface, so as to isolate fluids in the strata in which they are found and to prevent them from migrating into other strata.
- (B) Isolation of Open Hole from Casing. Where there is open hole below the casing, a cement plug shall be placed in the deepest casing string by 1. or 2. below, or, in the event lost circulation conditions exist or are anticipated, the plug may be placed in accordance with 3. below:
- 1. A cement plug placed by displacement method so as to extend from 100 feet below to 100 feet above the casing shoe.
- 2. A cement retainer with effective back—pressure control set not less than 50 feet, nor more than 100 feet, above the casing shoe with a cement plug calculated to extend from 100 feet below the casing shoe to 50 feet above the retainer.

- 3. A permanent type bridge plug set within 150 feet above the casing shoe with 50 feet of cement placed on top of the bridge plug. This plug shall be tested prior to placing subsequent plugs.
- (C) Plugging or Isolating Perforated Intervals. A cement plug shall be placed opposite all open perforations not previously squeezed with cement. This plug shall extend from 100 feet below to 100 feet above the perforated interval.
- (D) Isolation of Zones Behind Uncemented Casing. All oil, gas or fresh water-bearing zones located behind casing in the uncemented portion of the hole shall be squeeze cemented so as to isolate fluids in the strata in which they occur.
- (E) Isolating Zones Behind Cemented Casing. Inside cemented casing, a 100 foot cement plug shall be placed above each oil or gas zone and above the shoe of the intermediate or second surface casing. A cement plug at least 200 feet long also shall be placed across the intrazone freshwater–saltwater interface.
- (F) Junk in Hole or Collapsed Casing. In the event that junk cannot be removed from the hole and the hole below the junk is not properly plugged, cement plugs shall be placed as follows:
- 1. Sufficient cement shall be squeezed through the junk to isolate the lower oil, gas, or fresh water zones and 100 feet of cement placed on top of the junk.
- 2. If the top of the junk is opposite uncemented casing, the casing annulus immediately above the junk shall be cemented with sufficient cement to insure isolation of the lower zones.
- (G) Plugging of Casing Stubs. If casing is cut and recovered, a cement plug shall be placed so as to extend from 100 feet within the casing stub to 100 feet above the top of the casing stub.
- 1. If the stub extends up into the next larger casing string, then a retainer may be set 50 feet above the top of the stub and cement placed 150 feet below and 50 feet above the retainer. If the foregoing methods cannot be used, a bridge plug shall be set 50 feet above the top of the stub and capped with 50 feet of cement.
- 2. If the stub is below the next larger string, plugging of the open hole interval above the stub shall be accomplished in accordance with Section 2128(q)(1)(A), and, in addition, a cement plug shall be placed so as to extend from 100 feet below to 100 feet above the casing shoe that is exposed above the stub in accordance with Section 2128(q)(1)(B).
- (H) Plugging of Annular Space. No casing annular space that extends to the ocean floor shall be left open to drilled hole below. If this condition exists, 200 feet of the annulus immediately above the shoe of the preceding casing string shall be plugged with cement. If an uncemented inner casing string is cut and recovered to accomplish this requirement, the casing stub shall be plugged in accordance with Section 2128(q)(1)(G).
- (I) Surface Plug Requirement. A cement plug of at least 100 feet, with the top of the plug not more than 150 feet or less than 50 feet below the ocean floor, shall be placed in the well. Prior to the placement of the surface plug all inside casing strings which are uncemented at the surface plugging depth shall be cut and recovered. Casing cutting methods shall be employed that will not damage the well casing so as to prevent reentry of the well.
- (J) Testing of Plugs. The location and hardness of all cement plugs shall be tested by placement of drill string weight (10,000 pounds minimum) on the plug, and by application of pump circulation. A cement plug placed on top of a previously tested bridge plug or retainer need not be tested.
- (K) Mud. Each of the respective intervals of the hole between the various plugs shall be filled with mud fluid of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such intervals.
- (L) Clearance of Location. All casing and conductor shall be severed and removed from not more than 5 feet below the ocean floor, unless other plans are approved by the Staff. The ocean floor shall be cleared of any other obstructions. A method shall be employed to sever or cut the casing that will not damage the well casing so as to prevent reentry of the well.

- (M) Record of Abandonment. All plugging and abandonment operations shall be recorded on the driller's log.
  - (2) Temporary Abandonment
- (A) Any drilling well which is to be temporarily abandoned shall be mudded and cemented as required for permanent abandonment except that the requirements of Section 2128(q)(1), (E), (H), (I), and (L) shall thereupon be deferred. When casing extends above the ocean floor, a mechanical bridge plug (retrievable or permanent) shall be set in the casing between 15 and 200 feet below the ocean floor.
- (B) The use of a bridge plug to temporarily exclude an interval when recompleting a well is not permitted, unless the Staff approves in advance adequate plans for its future recovery and proper abandonment of the zone.
- (r) Daily Drilling Reports. The lessee shall provide daily telephone reports of drilling activities as required by the Staff.
  - (s) Log and History of Well.
- (1) The lessee shall keep a careful and accurate log, core record, and history of the drilling of each well.
- (2) The lessee shall provide field copies of electric logs and other surveys as necessary for the Staff to expeditiously approve subsequent well operations.
- (3) Within 60 days following the completion, abandonment, or the suspension of operations of any well, the lessee shall file with the Staff copies of all logs, including electric logs, surveys, drilling records, well histories, core records and related information as measured and recorded for the wells drilled by the lessee into the leased lands.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

# Article 3.3. Oil and Gas Production Regulations

#### § 2129. General Provisions.

- (a) This Article 3.3 pertains to oil and gas production operations on State oil and gas leases located on State tide and submerged lands under the jurisdiction of the State Lands Commission, and is applicable to operations conducted from mobile rigs, fixed offshore structures and upland locations serving these leases.
- (b) In addition to complying with Division 6 of the California Public Resources Code and with Title 2, Division 3, Chapter 1 of the California Administrative Code, the lessee shall comply with all applicable laws, rules and regulations of the United States and of the State of California and with any respective political subdivision thereof, including, but not limited to, the Division of Oil and Gas, the Department of Fish and Game, the Division of Industrial Safety, the State Water Resources Control Board, and the Regional Water Quality Control Boards, the California Coastal Commission, and any respective successor thereto.
- (c) All production operations on State oil and gas leases shall be carried on in a proper and workmanlike manner in accordance with accepted good oilfield practice.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d). Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### History

1. New Article 3.3 (Sections 2129–2132) filed 6–13–80; effective thirtieth day thereafter (Register 80, No. 24).

#### § 2130. Definitions.

For the purposes of this Article 3.3 the following definitions shall apply:

- (a) "Production operations" include but are not limited to well completion or recompletion, remedial and well maintenance work, and production facility and pipeline operation.
- (b) "Staff" shall mean the Executive Officer or other duly authorized member of the Staff of the State Lands Commission.

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NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2131. Administration.

(a) The Staff shall administer this Article 3.3 and shall thereby provide for the prevention and elimination of any contamination or pollution of the ocean and tidelands, for the prevention of waste, for the conservation of natural resources, and for the protection of human health, safety and property.

(b) The Commission has designed these regulations in as great detail as possible. However, the Commission recognizes that situations may arise which are not specifically covered by this Article 3.3 and that emergency situations may arise which will require immediate decisions by the Staff. In such situations, the Executive Officer or his designee may authorize appropriate procedures to be followed.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2132. Production Regulations.

- (a) Well Completion.
- (1) A well–completion program for each well, whether surface or subsea completed, shall be submitted as a part of the drilling program (Refer to Article 3.2, Section 2128(d)(1)) for approval by the Staff. In the event a completion program cannot be provided with the well–drilling program, the lessee shall submit a completion program for Staff approval prior to commencement of the completion work.
- (2) The program shall include detailed information and working drawings as appropriate, of the wellhead assembly, surface and downhole production control equipment, and safety system.
- (3) Proposals for subsea well completions shall be reviewed and approved by the Staff on an individual well basis.
  - (4) Wellhead Equipment.
- (A) The wellhead equipment associated with each casing string and tubing string and all valves and fittings which may be subjected to wellbore pressure under any condition, shall have a rated working pressure exceeding the maximum anticipated surface pressure to which they may be subjected.
- (B) All wellhead equipment, valves and flow lines installed on offshore wells shall be flange or other nonthread connected. All wellhead equipment, valves and flow lines on upland wells that are designed for a working pressure of 2,000 psi or greater shall be flange or other nonthread connected.
- (C) Valves shall be installed to permit fluids to be pumped into each casing string. Two master valves shall be installed on any well capable of flowing.
- (D) All wellhead equipment shall be tested by a fluid pressure equal to its rated working pressure after installation on a well.
- (E) All wellhead components, valves and flow lines in service upon adoption of these regulations are exempted from the requirements in Section 2132(a) (4)(B); except that any modification to existing equipment or piping, unless otherwise approved in writing by the Staff shall be flange or other nonthread connected.
- (F) All wellhead equipment, valves and flow lines on any well to be redrilled, recompleted or converted to fluid injection shall comply with the provisions of Sections 2132(a) (4)(A)–(E) above.
- (G) All pressure test results shall be recorded on the daily well work report.
- (5) Blowout Preventer Removal. If a well is capable of flowing oil or gas, a back-pressure valve or suitable tubing plug shall be installed in the tubing string(s) to seal the bore of the tubing while removing the blowout preventer stack and installing the Christmas tree.
- (6) Sealing of Casing—Tubing Annulus. All wells capable of flowing oil or gas shall be equipped with a tubing packer(s) to effectively seal the casing—tubing annulus. All production packers shall be properly tested upon installation.

(7) Perforation and Wireline Operations Under Pressure. All perforation and wireline operations conducted under pressure shall be performed through a lubricator installed on appropriate wireline blowout-prevention equipment. The pressure rating of the lubricator shall be equal to or greater than the maximum possible surface shut—in pressure of the well.

The well shall not be left unattended unless all wellhead flow valves and the wireline blowout preventer are closed in or unless the tools are pulled up into the lubricator and the master valve closed.

- (8) Subsurface Safety Valves.
- (A) All wells capable of flowing oil or gas shall be equipped with a surface—controlled subsurface safety valve installed in the tubing string(s) at a depth of 100 feet or more below the ocean floor, or ground level for upland wells. Such valve shall be installed in artificial lift wells, unless proof is provided to the Staff that such wells are incapable of flowing. Wells which are presently equipped with direct—controlled subsurface safety valves shall have surface—controlled subsurface safety valves installed the first time the tubing is pulled. The control system for the surface—controlled subsurface safety valves shall be connected to the facility integrated safety—control system, where applicable.
- (B) Subsurface safety valves at the time of installation shall conform to the "American Petroleum Institute (API) Specification for Subsurface Safety Valves," API Spec 14 A, Third Edition, November 1978, or subsequent revisions thereto that are approved by the Staff.
- (C) Subsurface safety valves shall be installed, adjusted and maintained in accordance with the "American Petroleum Institute (API) Recommended Practice for Design, Installation and Operation of Subsurface Safety Valve Systems," API RP 14B, First Edition, October 1973, or subsequent revisions thereto that are approved by the Staff.
- (D) Each subsurface safety valve installed in a well shall be tested by the lessee for proper operation each month. The Staff may adjust the testing frequency based upon the performance record of the valve. Permission to increase the testing frequency shall require substantiation by the lessee and written approval by the Staff. The tests may be witnessed and approved by the Staff. If the valve does not operate properly, it shall be repaired or replaced and again tested for proper operation.
- (E) When a subsurface safety valve is removed from a well for repair or replacement it shall be replaced immediately or a tubing plug shall be installed before the well is left unattended.
- (F) The well history and any subsequent report of workover shall state the type and depth of the subsurface safety valve or tubing plug installed in the well.
- (G) Records shall be maintained at the facility or at the nearest onshore office of the lessee. The records shall contain a description and show the present status and past history of each subsurface safety valve or tubing plug, including dates and details of any inspection, testing, repairing, and reinstallation or replacement. The lessee shall submit a copy of such records semiannually to the Staff.
  - (9) Wellhead Surface Safety Valves.
- (A) All wells capable of flowing oil or gas and all artificial lift wells capable of afterflow when the source of power is shut off shall be equipped with an automatic, fail-close, wellhead surface safety valve. High-low pressure sensors shall be located in the flowline close to the wellhead and shall be set to cause shut-in of the valve in the event of abnormally high or low flowline pressures. In addition, each valve shall be connected to the integrated safety control system on the facility.
- (B) Wellhead surface safety valves shall be employed in the safety control system on the facility and shall be tested in accordance with the provisions of the "American Petroleum Institute (API) Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface—Safety Systems on Offshore Production Platforms," API RP 14C, Second Edition, January 1978, or subsequent revisions thereto that are approved by the Staff.
- (C) Wellhead surface safety valves at the time of installation shall conform to the "American Petroleum Institute (API) Specification for Wellhead Surface Safety Valves for Offshore Service," API Spec. 14D, Sec-

ond Edition, November 1977, as amended by supplement 2, November 1978, or subsequent revisions thereto that are approved by the Staff.

- (D) All wellhead surface safety valves shall be tested by the lessee for operation and holding pressure monthly. If the valve fails to test properly, it shall be repaired or replaced and again tested for proper operation. Pressure sensors shall be operated and tested by the lessee for proper pressure settings monthly. The monthly tests may be witnessed and approved by the Staff. Results of all tests shall be recorded and maintained at the facility or at the nearest onshore office of the lessee.
  - (10) Wells on Artificial Lift.
- (A) Artificial lift wells not equipped with a wellhead surface safety valve shall have safety devices installed to shut off the source of power in the event of abnormally high or low flowline pressures. The source of power shall be controllable by the integrated safety system.
- (B) The safety devices shall be actuated and tested monthly by the lessee. If the device fails to test properly, it shall be repaired or replaced and again tested for proper operation. The monthly tests may be witnessed and approved by the Staff. The results of all tests shall be recorded and maintained at the facility or at the nearest onshore office of the lessee.
  - (11) Production Headers.
- (A) All well flowlines shall be equipped with a check valve located downstream at the production header. All check and header valves, as well as any piping that might be subjected to wellhead pressure, shall be of sufficient strength to withstand any possible shut–in wellhead pressure.
- (B) The flowline check valve shall be tested for holding pressure monthly by the lessee. If the valve fails to test properly, it shall be repaired or replaced and again tested for proper operation. The monthly tests may be witnessed and approved by the Staff. The results of all tests shall be recorded and maintained at the facility or at the nearest onshore office of the lessee.
  - (b) Remedial and Well-Maintenance Work.
- (1) The lessee shall obtain written approval from the Staff prior to performing remedial work on any well that involves the alteration of its casing or that will result in changing its producing interval. Such work includes, but is not necessarily limited to, casing and liner repair or replacement, squeeze cementing, plugging, perforating, and the installation or removal of bridge plugs and packers.
- (A) Each proposal for remedial work shall be accompanied by a statement reflecting the reason for the work and a detailed work and blowout prevention equipment program. The work program also shall include the static formation pore pressure of all zones exposed or to be exposed in the well, the type and densities of circulating fluids to be used, and any other data that is pertinent to well control.
- (2) The lessee shall provide written notification to the Staff of its intention to perform nonroutine well—maintenance work on any well. Such work may include, but may not be limited to, formation fracturing, acidization or solvent stimulation, snubbing operations, wireline work resulting in a change of producing interval, any work on a subsea completed well that involves entry of the well, and any other well work that involves a higher than normal degree of risk.
- (A) The written notification shall include a description of the work to be performed, the type of blowout prevention equipment and safety equipment to be used, and the anticipated date that the work will commence.
- (3) Routine well-maintenance work such as pump changes and wireline work not resulting in a change in the producing interval shall not require advance Staff notification or approval. However, routine wellmaintenance work shall be recorded on the lessee's daily operations report and copies of the report shall be provided to the Staff at its request.
- (4) Minimum blowout prevention equipment requirements for remedial and well-maintenance work shall be in accordance with the Division of Oil and Gas Manual No. M07 entitled "Oil and Gas Well Blowout Prevention in California," Second Edition, 1978, or subsequent revisions thereof that are approved by the Staff.

- (5) On wells capable of flowing oil or gas, the bore of the tubing string(s) shall be sealed with a back–pressure valve, safety valve or suitable tubing plug during the removal or installation of the Christmas tree.
- (6) All perforating and wireline operations conducted under pressure shall be performed through a lubricator installed on appropriate wireline—blowout—prevention equipment. The pressure rating of the lubricator shall be equal to or greater than the maximum possible surface shut—in pressure of the well. The well shall not be left unattended unless all well-head flow valves and the wireline blowout preventer are closed in, or tools are pulled up into the lubricator and the master valve closed.
- (7) Within 60 days after the completion of remedial and nonroutine well-maintenance work, the lessee shall file a history with the Staff that describes the work performed and final condition of the well.
  - (c) Supervision and Training.
- (1) The lessee shall provide full-time onsite company supervision of well completion and other production well work which is performed on any well that may be capable of flowing oil, gas or water. This also includes wireline perforating and any well work performed under pressure.
- (2) At least one member of the production well work crew or the production supervisor shall maintain surveillance of the well at all times, unless the well is secured with blowout preventers, bridge plugs, tubing plugs or appropriate valving.
- (3) Lessee and contractor supervisory personnel and crew chiefs who are engaged in production well work operations on State leases shall be trained and qualified in well–control equipment, operations and techniques. These persons shall successfully complete a basic well–control course every four years and take a refresher course in well–control each year. The basic and refresher course curriculums shall be submitted to and be approved by the Staff. Written certification shall be filed with the Staff on compliance with these training requirements.
- (4) A well control drill plan shall be prepared by the lessee for each well production facility for the training of crews engaged in production well work. The plan shall be submitted to and approved by the Staff.
- (5) Well control drills shall be held for each crew on a daily basis until each crew member demonstrates the ability to satisfactorily perform his well control assignment. Thereafter, drills shall be held at least once a week for each crew. All drills shall be recorded on the daily well work report.
  - (d) Anomalous Casing Annulus Pressure.
- (1) The casing annulus pressure(s) on each well shall be checked monthly and a record of the pressure readings shall be maintained at the facility or at the nearest onshore office of the lessee if the facility is not-manned. The lessee shall give immediate written notification to the Staff of the occurrence of an anomalous pressure between casing strings in any well
- (2) The lessee shall investigate to determine the source of any anomalous pressure and, if appropriate, shall seal off the source in a manner approved by the Staff.
- (3) Any attempt by the lessee to reduce the surface pressure by producing the fluid from the casing annulus, must include a monthly production test of each annulus.
  - (e) Subsurface Injection Projects.
- (1) All subsurface injection projects proposed on State leases, whether injection is for the purpose of reservoir stimulation or waste disposal, shall require prior approval of the Staff. A lessee requesting approval of an injection project shall provide the Staff with all pertinent geological, engineering, and well data that is requested for the evaluation of the project. The lessee shall also file with the Staff copies of all relevant information furnished to the Division of Oil and Gas.
- (2) Recompletion or conversion of a well to fluid injection shall require the prior approval of the Staff.
- (3) Within 90 days after the start of injection and annually thereafter, the lessee shall file with the Staff information to confirm that injection is limited to the objective zone. This information shall include, but shall not be limited to, dynamic injection profile surveys, daily injection vol-

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ume and pressure data. In the event that injection is determined not to be restricted to the objective zone, then the lessee shall take corrective action as soon as possible. The well–work program shall be approved in writing by the Staff prior to commencement of the work.

- (f) Waste Disposal.
- (1) All waste discharged into the ocean from production operations shall be treated so as to comply with the discharge requirements of the appropriate Regional Water Quality Control Board. Oil, tar, or other residuary products of oil, or refuse of any kind from any well or facility, such as circulating fluids that contain substances which are toxic to fish life, and chemicals shall be disposed of on shore in a dumping area in conformance with local regulatory requirements. The lessee shall inform the Staff of the method of waste disposal and any changes that are required to comply with the discharge requirements of the Regional Water Quality Control Board. Refer to Article 3.4, Section 2138, for requirements concerning the disposal of drill cuttings and drilling muds.
- (g) Production Facility Safety Equipment and Procedures. Unless otherwise provided for in this Section 2132(g), safety equipment, systems and procedures on offshore production facilities shall be based upon the "American Petroleum Institute (API) Recommend Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms," API RP 14C, Second Edition, January 1978, or subsequent revisions thereto that are approved by the Staff.
- (1) Integrated Safety–Control System. Each offshore production facility shall be equipped with an approved integrated safety–control system that will cause shut–in of all wells and shut–down of the complete production facility in the event of fire, pipeline failure or other catastrophe. A complete testing of the safety–control system to the satisfaction of the Staff shall be conducted by the lessee every six months and may be witnessed and approved by the Staff.

The integrated safety—control system shall be actuated by the following devices which shall be installed and maintained in an operating condition at all times. The devices shall be tested monthly by the lessee, which tests shall be witnessed and approved by the Staff. The lessee shall maintain records at the production facility or at its nearest onshore office showing the present status and past history of each such device, including dates and details of inspection, testing, repairing, adjustment, and reinstallation or replacement.

- (A) Emergency manually operated controls to actuate the integrated safety system shall be located on the helicopter deck and on all exit stairway landings leading to the helicopter deck and to all boat landings.
- (B) All oil and gas pipelines receiving production from offshore production facilities shall be equipped with high-low-pressure shut-in sensors. The low-pressure sensor shall be set so as to actuate the integrated safety-control system in the event of pipeline failure. The pressure settings shall be determined by pipeline operating characteristics, and shall be set as close as practicable to the normal operating pressure of the pipeline.
- (C) All pneumatic, hydraulic, and other shut-in control lines shall be equipped with fusible material at strategic points. Fire-detector systems shall be equipped with devices to actuate the integrated safety-control system.
- (D) The automatic gas—detector system shall be so equipped as to actuate the integrated safety—control system at a point not higher than 80% of the lower explosive limit.
- (2) Safety Devices on Vessels and Tanks. All production vessels and tanks shall be equipped with safety devices as listed below that will cause shut—in of the wells connected to the vessel or tank. The devices shall be tested monthly by the lessee, which tests shall be witnessed and approved by the Staff. The lessee shall maintain records on the production facility showing the present status and past history of each such device, including dates and details of inspection, testing, repairing, adjustment, and reinstallation or replacement.
- (A) All separators shall be equipped with high-low-pressure shut-in sensors and high-low-level shut-in controls.

- (B) All pressure surge tanks shall be equipped with a high- and low-pressure shut-in sensor and high-low-level shut-in controls.
- (C) Atmospheric surge tanks shall be equipped with a high-level shutin sensor
- (D) All other hydrocarbon-handling pressure vessels shall be equipped with high-low-pressure shut-in sensors and high-level shut-in controls unless they are determined by the Staff to be otherwise protected.

High-pressure shut-in sensors shall be set no higher than 5% below the rated or designed working pressure, and low-pressure shut-in sensors shall be set no lower than 10% below the lowest pressure in the operating pressure range on all vessels with a rated or designed working pressure of more than 400 psi. On lower pressure vessels, the above percentages shall be used as guidelines for sensor settings considering pressure and operating conditions involved, except that sensor settings shall not be within 5 psi of the rated or designed working pressure or the lowest pressure in the operating pressure range.

All pressure—operated sensors shall be equipped to permit testing with an external pressure source.

- (3) Pressure Relief Valves.
- (A) All pressure vessels shall be equipped with relief valves connected into a gas vent line. All gas vent line systems shall be equipped with a scrubber or similar separation equipment.
- (B) A relief valve shall be set no higher than the safe working pressure of the vessel to which it is attached.
- (C) Pilot-operated pressure-relief valves shall be equipped to permit testing with an external pressure source. Spring-loaded pressure relief valves shall either be bench-tested or equipped to permit testing with an external pressure source.
- (D) Relief valves shall be tested by the lessee every six months. The lessee shall maintain records on the production facility showing the present status and past history of each relief valve, including dates and details of inspection, testing, repairing, adjustment and reinstallation or replacement
- (4) Firefighting System. A firefighting system shall be installed and maintained in operating condition in accordance with the applicable standards of the National Fire Protection Association.
- (A) A fixed automatic water spray system or other system approved by the Staff shall be installed in all wellhead areas and in areas where production handling equipment is located.
- (B) A firewater system of rigid pipe with fire-hose stations shall be installed on all levels of the facility.
- (C) A system employing chemicals or chemical additives may be used in appropriate areas in lieu of or in addition to a firewater system to provide more effective fire protection and control.
- (D) An auxiliary connection to the firewater piping shall be installed at a remote location to supply the firefighting system in case of need.
- (E) The firefighting system shall be equipped with reserve water pumps to provide for the operating of the system during routine pump maintenance work and in the event of pump failure. The firewater pumps shall be test–operated weekly and the automatic water spray systems shall be test–operated monthly by the lessee. Testing methods other than the use of water shall be approved by the Staff. Monthly tests of the firewater pumps and of the automatic water spray systems may be witnessed and approved by the Staff. The lessee shall maintain a record of the tests at the production facility or at its nearest onshore office.
- (F) Portable fire extinguishers shall be located in the living quarters and in other strategic areas. A record showing the date when fire extinguishers were last inspected, tested, or recharged shall be maintained on the production facility.
- (G) A diagram of the firefighting system showing the location of all equipment shall be posted in a prominent place on the production facility.
- (H) Fire drills shall be conducted weekly by the supervisor in charge of the production facility. A record showing the date that fire drills were

conducted shall be maintained on the production facility for at least one year.

- (5) Combustible Gas Detector and Alarm System. An automatic hydrocarbon/combustible gas detector and alarm system shall be installed and maintained, on each offshore production facility, in accordance with the following:
- (A) Gas-detection systems shall be installed in all areas containing gas-handling facilities or equipment and in enclosed areas which are classified as hazardous areas as defined in the California Administrative Code, Title 24, Part 3.
- (B) All gas-detection systems shall be capable of continuously monitoring for the presence of combustible gas in the areas in which the detection devices are located.
- (C) The central control shall be capable of giving an audible alarm at a point not higher that 60 percent of the lower explosive limit.
- (D) The central control shall automatically activate the shut–in sequences of the integrated safety control system and emergency equipment at a point not higher than 80 percent of the lower explosive limit.
- (E) A diagram of the gas-detection systems showing the location of all gas-detection points shall be posted in a prominent place on the production facility.
- (F) The gas detection systems shall be tested monthly by the lessee, which tests may be witnessed and approved by the Staff. The lessee shall maintain a record of the tests at the production facility or at its nearest onshore office.
- (6) Hydrogen Sulfide Gas Detection and Precaution. Any offshore production facility that handles production known to contain hydrogen sulfide (H<sub>2</sub>S) gas shall be equipped and maintained in accordance with following requirements to provide for the safety of personnel:
  - (A) Hydrogen Sulfide Gas Detection and Alarm System.
- 1. A separate automatic hydrogen sulfide  $(H_2S)$  gas detector and alarm system. This equipment shall be capable of sensing a minimum of five parts per million  $H_2S$  in air, with sensing points located at all enclosed and hazardous areas where gas handling facilities are located, as well as any living quarters and other areas where  $H_2S$  might accumulate in hazardous quantities. The  $H_2S$  detection devices shall activate audible and visible alarms when the concentration of  $H_2S$  reaches 20 parts per million in air.
- 2.  $H_2S$  detector ampules or other approved devices shall be available for use by all working personnel. After  $H_2S$  has been initially detected by any device, frequent inspections of all area of poor ventilation shall be made with a portable  $H_2S$ -detector instrument.
- (B) Contingency Plan. A contingency plan shall be developed for each production facility that handles production known to contain hydrogen sulfide  $(H_2S)$ . The plan shall include the following:
- 1. General information and physiological responses to  $\rm H_2S$  and  $\rm SO_2$  exposure.
  - 2. Safety procedures, equipment, training, and smoking rules.
- Procedures for normal operating conditions and for H<sub>2</sub>S emergency conditions.
- 4. Responsibilities and duties of personnel for the emergency operating condition.
- 5. Designation of briefing areas as locations for assembly of personnel during an emergency condition. At least two briefing areas shall be established on each facility. Of these two areas, the one upwind at any given time is the safe briefing area.
  - 6. Evacuation plan.
  - 7. Agencies to be notified in case of an emergency.
- 8. A list of medical personnel and facilities, including addresses and telephone numbers.
  - (C) Personnel Training Program.
- 1. To promote efficient safety procedures, an on–site  $H_2S$  safety program, which includes a monthly drill and training session, shall be established. Records of attendance shall be maintained on the production facility.

- 2. Supervisory personnel shall have completed a recognized basic first—aid course and shall be responsible for training of work crews and facility operators. All personnel in the working crew shall have been indoctrinated in basic first—aid procedures applicable to victims of  $H_2S$  exposure. During on—site training sessions and drills, emphasis shall be placed upon rescue and first aid for  $H_2S$  victims.
- 3. Each production facility shall have the following equipment, and the facility operator and each crew member shall be thoroughly familiar with the location and use of these items:
  - A first-aid kit sized for the normal working number of personnel.
- Resuscitators, complete with face masks, oxygen bottles, and spare oxygen bottles.
  - A Strokes litter or equivalent.
- 4. All personnel, whether regularly assigned, contracted, or employed on an unscheduled basis, shall be informed as to the hazards of  $H_2S$  and  $SO_2$ . They shall also be instructed in the proper use of personnel safety equipment which they may be required to use, informed of  $H_2S$  detectors and alarms, ventilation equipment, prevailing winds, briefing areas, warning systems, and evacuation procedures.
  - (D) Personnel Protective Equipment.
- 1. All personnel on a production facility or aboard marine vessels serving the production facility shall be equipped with proper personnel protective—breathing apparatus. The protective—breathing apparatus used in an  $\rm H_2S$  environment shall conform to all applicable Occupational Safety and Health Administration regulations as set forth in the Code of Federal Register 29 CFR 1910.134 and American National Standards Institute standards. Optional equipment, such as nose cups and spectacle kits, shall be available for use as needed.
- 2. A system of breathing–air manifolds, hoses, and masks shall be provided in the briefing areas. A cascade air–bottle system shall be provided to refill individual protective–breathing–apparatus bottles. The cascade air–bottle system may be recharged by a high–pressure compressor suitable for providing breathing–quality air, provided the compressor suction is located in an uncontaminated atmosphere. All breathing–air bottles shall be labeled as containing breathing–quality air fit for human usage. The compressor and compressed air system shall comply with 29 CFR 1910.134 (OSHA).
- 3. The storage locations of protective-breathing apparatus shall be such that they are quickly and easily available to all personnel. Storage locations shall include the following:
  - Facility operator's office.
  - Each working deck.
  - Crew quarters.
  - Equipment storage room.
  - Designated briefing areas.
  - Heliport.
- 4. Workboats attendant to facility operations shall be equipped with a protective–breathing apparatus for all workboat crew members. Additional protective–breathing apparatus shall be available for evacuees. Whenever possible, boats shall be stationed upwind.
- 5. Helicopters attendant to facility operations shall be equipped with a protective–breathing apparatus for the pilot.
- 6. The following additional personnel safety equipment shall be available for use as needed:
  - Portable H<sub>2</sub>S detectors.
- Retrieval ropes with safety harnesses to retrieve incapacitated personnel from contaminated areas.
- Chalkboards and note pads at convenient locations for communication purposes.
  - Bull horns and flashing lights.
  - Resuscitators.
  - (E) Visible Warning System.
- 1. Wind-direction equipment shall be installed at prominent locations to indicate to all personnel, on or in the immediate vicinity of the produc-

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tion facility, the wind direction at all times for determining safe upwind areas in the event that H<sub>2</sub>S or SO<sub>2</sub> is present in the atmosphere.

2. Operational danger signs shall be displayed from each side of the facility, and a number of rectangular red flags shall be hoisted in a manner visible to watercraft and aircraft.

The signs shall have a minimum width of eight feet and a minimum height of four feet, and shall be painted a high-visibility yellow color with black lettering of a minimum of 12 inches in height, indicating:

#### "DANGER-HYDROGEN SULFIDE-H2S"

Each flag shall be of a minimum width of three feet and a minimum height of two feet. All signs and flags shall be illuminated under conditions of poor visibility and at night when in use. These signs shall indicate the following operational conditions and requirements:

- When H<sub>2</sub>S is present, signs shall be displayed.
- When H<sub>2</sub>S is determined to have reached or exceeded a level of 20 parts per million in environmental areas, protective equipment shall be worn by all personnel in those areas and red flags shall be hoisted. Nonworking personnel and nonessential personnel shall be removed to a safe location, or evacuated as appropriate. Radio communications shall be used to alert all known air-and-watercraft in the immediate vicinity of this condition.
- (F) Ventilation Equipment. All ventilation devices shall be explosionproof when used in areas where H<sub>2</sub>S may accumulate. Movable ventilation devices shall be provided in work areas and be multidirectional and capable of dispersing H<sub>2</sub>S or SO<sub>2</sub> vapors away from working personnel.
- (G) Flare System. The flare system shall be designed to safely gather and burn H<sub>2</sub>S gas. Flare lines shall be located as far from the other facilities as feasible, in a manner to compensate for wind changes. The flare system shall be equipped with a pilot and an automatic igniter. Backup ignition for each flare shall be provided.
- (H) Drilling Operations. Any well drilling operation conducted from a production facility and which will penetrate reservoirs known or expected to contain hydrogen sulfide (H<sub>2</sub>S) shall follow whatever additional requirements as are set forth in USGS Outer Continental Shelf Standard "Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment," No. 1 (GSS-OCS) Second Edition, June 1979, or subsequent revisions thereto approved by the Staff.
- (I) Remedial and Well Maintenance Operations. Any well remedial or well maintenance operation conducted from a production facility, where the subject well has penetrated reservoirs known to contain hydrogen sulfide, shall follow whatever additional requirements, as may be applicable to that particular job, as are set forth in aforementioned USGS "Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment."
- (J) Notification of Regulatory Agencies. The following agencies shall be notified immediately if H2S has been determined to have reached or exceeded a level of 20 ppm in the environmental area:
  - 1. State Lands Commission.
  - 2. U. S. Coast Guard.
  - (7) Electrical Equipment and Systems.
- (A) An auxiliary electrical power supply shall be installed to provide sufficient emergency power for all electrical equipment required to maintain safety of operation in the event the primary electrical power supply fails. The auxiliary electrical power-supply system shall be tested monthly by the lessee and may be witnessed and approved by the Staff. The lessee shall maintain a record of the tests at the production facility or at its nearest onshore office.
- (B) All electrical generators, motors, electric power, control, lighting systems shall be installed, protected, and maintained in accordance with the California Administrative Code, Title 24, Part 3.
- (8) Welding Practices and Procedures. The following requirements shall apply to all production facilities during any time in which drilling or producing operations are taking place. The term "welding and burning" is defined to include arc or acetylene welding and arc or acetylene cutting.
  - (A) All welding and burning shall be minimized by fabrication ashore.

- (B) If possible, all welding and burning shall be done in an approved, properly functioning welding room.
- (C) If welding or burning is necessary outside the weldingroom it shall be conducted in accordance with welding procedures approved by the Staff, which shall include the following minimum requirements:
- 1. The lessee's supervisor in charge at the installation shall issue written authorization for the work after he has inspected the area in which the work is to be done. If both drilling and producing operations are taking place, the drilling supervisor and the production supervisor shall both sign this authorization.
- 2. During all welding and burning operations, a man designated as a "fire watch" shall operate a portable gas detector and shall have in his possession a portable fire extinguisher. In addition, a fire hose shall be laid out to the welding area and it shall remain pressurized to the nozzle during the entire period of welding and burning. He shall inspect the area with the gas detector prior to commencement of the welding or burning. He shall continuously monitor the area and shall cause the welding or burning to cease at any time that conditions become unsafe.
- 3. If welding or burning must be done on a vessel which has contained a flammable substance, all connections to the vessel shall be broken and displaced or slip blanked, and the vessel shall be thoroughly cleaned and rendered free of such flammable substance and tested for gas before the work begins. Prior to performing hot work on the outside of a vessel, the vessel shall be completely flooded with water.
- 4. If welding or burning must be done on in-service or connected-up piping that section of pipe shall be isolated by the installation of slip blanks or blind flanges, thoroughly purged and cleaned to render it free of any flammable substance, and tested for gas before the work begins. When welding or burning on an isolated, clean and gas-free piping section, one end must remain open.
- 5. If welding or burning must be done in confined spaces, the space shall be adequately vented and a continuous source of fresh air shall be supplied while work is in progress. If fresh air is supplied by blowers, they shall be so positioned that the intakes will not pick up exhausted gases, fumes, or vapors.
- 6. If any welding or burning is done on bulkheads, decks, or overheads, the adjacent, overlying or underlying spaces shall be examined to determine that it is safe for the work to proceed. If deemed advisable, a second "fire watch" shall be employed in the contiguous area.
- 7. If any welding or burning must be done on structural members, it shall be determined by a competent authority that such welding or burning does not endanger the integrity of the structure.
- (h) Pipeline Operations and Maintenance. All oil and gas pipelines on State tide and submerged lands shall be operated and maintained in accordance with the following minimum requirements:
  - (1) General Requirements.
- (A) Each lessee shall establish and maintain current written procedures:
- 1. To insure the safe operation and maintenance of its pipeline system, in accordance with this Section 2132(h), during normal operations.
  - 2. To be followed during abnormal operations and emergencies.
- (B) A lessee shall not operate or maintain its pipeline system at a level of safety lower than that required by Section 2132(h) and the procedures that the lessee is directed to establish under Section 2132(h)(1)(A) above.
- (C) Whenever a lessee discovers any conditions that present any immediate hazard to persons, property, or the environment, the lessee shall not operate the affected part of the system until the unsafe condition has been corrected.
  - (2) Maximum Operating Pressures.
- (A) Except for surge pressures and other variations from normal operations, a lessee shall not operate a pipeline at a pressure which exceeds any of the following:
- 1. The internal design pressure of the pipe as determined in accordance with ANSI Code B31.4 for Liquid Petroleum Transportation Piping Sys-

tems and ANSI Code B31.8 for Gas Transmission and Distribution Piping Systems.

- 2. The design pressure of any other component of the pipeline.
- 3. Eighty percent of hydrostatic test pressure to which the pipeline has been hydrostatically tested.
- (B) A lessee shall not permit the pressure in a pipeline during surges or other variation from normal operations to exceed 110 percent of the maximum allowable operating pressure limit established under Section 2132 (h)(2)(A) above. The lessee shall provide adequate controls and protective equipment to control the pressure within this limit.
- (3) Communications. Each lessee shall have a communications system for the transmission of the information required for the safe operation of its pipeline system.
- (4) External Corrosion Control. All pipelines shall be cathodically protected to prevent external corrosion. The lessee shall conduct tests annually on all cathodically protected pipelines to assure an adequate level of protection. Cathodic protection rectifiers shall be inspected by a qualified electrical inspector every three months. The output of the rectifiers shall be checked daily. The lessee shall maintain records on the production facility showing the daily output readings and the dates, details of inspection, and repairs to each rectifier.
- (5) Internal Corrosion Control. Where corrosion inhibitors are necessary to mitigate internal corrosion, they shall be used in sufficient quantities to protect the entire pipeline. The lessee shall use coupons or other monitoring equipment to determine the effectiveness of the inhibitors. The lessee shall, at intervals not exceeding six months, examine coupons or other corrosion–monitoring equipment to assure effectiveness of any inhibitors used.
  - (6) Pipeline Inspections.
- (A) All unburied oil and gas pipelines shall be visually inspected annually by the lessee for damage, evidence of corrosion, and conditions that may be hazardous to the pipelines.
- (B) Where mechanically possible, all oil and gas pipelines shall be inspected annually by the lessee using an electronic survey tool. Upon request of the lessee, the frequency of inspection may be reduced depending upon the degree of corrosion observed.
- (C) If it is not mechanically possible to run an electronic survey tool, the lessee shall hydrostatically pressure test each oil and gas pipeline to at least 1.5 times its maximum operating pressure. The test procedure shall be approved by the Staff.
- (D) The ocean surface above all pipelines that service offshore facilities shall be inspected a minimum of once each week for indication of leakage, using aircraft or boats. Records of these inspections, including the date, methods, and results of each inspection, shall be maintained by the lessee at its nearest onshore office.
- (7) Reports of Inspection. The lessee shall file a report with the Staff describing the testing procedure and results of (1) the annual test of the cathodic protection system on each pipeline and (2) the annual visual and electronic inspection of hydrostatic test of each oil and gas pipeline. The reports shall be filed within 60 days following completion of the work.
  - (8) Safety Equipment and Procedures.
- (A) All oil and gas pipelines receiving production from offshore production facilities shall be equipped with high-low-pressure shut-in sensors and with an automatic shut-in valve located at the offshore facility. The pressure sensors shall be connected so as to actuate the automatic shut-in valves on the pipelines as well as all shut-in devices on input sources to the pipelines. The pressure settings shall be determined by pipeline operating characteristics, and shall be set as close as practicable to the normal operating pressure of the pipeline. The automatic shut-in valves also shall be actuated by the integrated safety-control system of the production facility.
- (B) All oil and gas pipelines that deliver production to an onshore production facility shall be equipped with a remote—controlled shut—in valve or check valve at or near the receiving facility.
- (C) All oil and gas pipelines that cross an offshore facility which do not deliver production to the facility, and may or may not receive produc-

- tion from the facility, shall be equipped with an automatic shut—in valve to be located in the upstream portion of the pipeline at the facility, so as to prevent uncontrolled flow at the facility. This automatic shut—in valve shall be controllable by the integrated safety—control system of the facility.
- (D) Any pipeline that delivers gas to an offshore facility for the purpose of gas lift or other operations shall be equipped with an automatic shut—in valve to be located in the upstream portion of the pipeline at the facility, so as to prevent uncontrolled flow at the facility. This automatic shut—in valve shall be controllable by the integrated safety—control system of the facility.
- (E) All oil pumps and gas compressors shall be equipped with high-low-pressure shut-in devices.
- (F) All pressure sensors, pressure shut-in devices, and automatic shut-in valves shall be tested monthly by the lessee, and shall be witnessed and approved by the Staff. The lessee shall maintain records on the production facility showing the present status and past history of each device, including dates and details of inspection, testing and repairing, adjustment, and reinstallation or replacement.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources

# Article 3.4. Oil and Gas Drilling and Production Operations: Pollution Control

#### § 2133. General Provisions.

- (a) This Article 3.4 pertains to oil and gas drilling and production operations on State oil and gas leases located on State tide and submerged lands under the jurisdiction of the State Lands Commission, and is applicable to operations conducted from mobile rigs, fixed offshore structures and upland locations serving these leases.
- (b) In addition to complying with Division 6 of the California Public Resources Code and with Title 2, Division 3, Chapter 1 of the California Administrative Code, the lessee shall comply with all applicable laws, rules and regulations now or hereafter promulgated of the United States of the State of California and of any respective political subdivision thereof, including, but not limited to, those of the Division of Oil and Gas, the Department of Fish and Game, the Division of Industrial Safety, the State Water Resources Control Board, and the Regional Water Quality Control Board, the California Coastal Commission, and any respective successors thereto.
- (c) All operations conducted on State oil and gas leases shall be carried on in a proper and workmanlike manner in accordance with accepted good oilfield practice.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301, and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### HISTORY

 New Article 3.4 (Sections 2133–2142) filed 6–13–80; effective thirtieth day thereafter (Register 80, No. 24).

#### § 2134. Definitions.

For purposes of this Article 3.4 the following definition shall apply:

(a) "Staff" shall mean the Executive Officer or other duly authorized member of the Staff of the State Lands Commission.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301, and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2135. Administration.

(a) The Staff shall administer this Article 3.4 and shall thereby seek to provide for the prevention and elimination of any contamination or pollution of the ocean and tidelands, for the prevention of waste and for the

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conservation of natural resources, and for the protection of human health and safety and of property.

(b) The Commission has designed these regulations in as great detail as possible. However, the Commission recognizes that situations may arise which are not specifically covered by this Article 3.4 and that emergency situations may arise which will require immediate decisions by the Staff. In such situations, the Executive Officer or his designee may authorize appropriate procedures to be followed.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301, and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2136. Prohibition of Pollution.

(a) Pollution and contamination of the ocean and tidelands and any impairment of or interference with recreation, fishing, or navigation in the waters of the ocean or any bay or any inlet thereof is prohibited; and no oil, tar, residuary product of oil or any refuse of any kind from any well or facility that is deleterious to marine life shall be permitted to be deposited on or pass into the waters of the ocean or any bay or any inlet thereof.

(b) All drilling and production operations shall be conducted in a manner that will eliminate, insofar as is practical, any dust, noise, vibration, or noxious odors.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2137. Suspension of Operations and Corrective Action.

A lessee shall suspend immediately any drilling and production operations, except those which are corrective, protective, or mitigative, in the event of any disaster of or contamination or pollution caused in any manner or resulting from drilling and/or production operations under its lease. Such drilling and/or production operations shall not be resumed until adequate corrective measures have been taken and authorization for resumption of such operations has been made by the Staff. Corrective measures shall be taken immediately whenever pollution has occurred. Note: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2138. Disposal of Drill Cuttings and Drilling Muds.

The lessee shall dispose of those drill cuttings and drilling muds associated with drilling and production well work, in accordance with regulations promulgated by the appropriate Regional Water Quality Control Board. The method employed to dispose of the drill cuttings and drilling muds shall be submitted to the Staff for approval along with the drilling mud program that is required in Section 2128(d)(1).

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2139. Oil Spill Contingency Plan.

Each lessee shall prepare and maintain a current oil spill contingency plan for initiating corrective action to control and recover oil spilled in or on the ocean. The plan shall cover both minor and major oil spills associated with lease drilling and production operations. The plan and any subsequent revisions thereto shall be submitted for approval by the Staff. NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2140. Pollution Control and Removal Equipment.

(a) Pollution control equipment and material shall be available immediately to each lessee for use in oil pollution control and removal operations on its lease. The equipment and material shall include, but need not be limited to, containment booms, skimming apparatus, licensed chemicals, and absorbents, and shall be the most effective available given the current state of pollution control and removal research and development at the time of acquisition. The lessee shall, however, update such equip-

ment whenever any significant technological improvements are developed.

(b) Emergency equipment shall be maintained on each mobile drilling rig and fixed offshore drilling or production facility for immediate cleanup of small oil spills. Each mobile drilling rig shall be equipped with a minimum of 1500 feet of oil containment boom, an oil skimming or recovery device that is capable of open ocean use, and an amount of absorbent material sufficient to remove 15 barrels of spilled oil. In addition, a boat that is capable of deploying this equipment shall be maintained onsite or available to the rig within 15 minutes. The equipment and material required on each fixed offshore drilling or production facility shall be determined and approved by the staff on an individual basis considering the type of structure, location, current activity, oil production capability, method of well production and other factors peculiar to the facility.

Equipment for the control and removal of larger oil spills shall be maintained at an offshore or onshore location near the area of lease operations where deployment and response to the spill would provide the most feasible protection of coastal resources. All equipment shall be inspected regularly and shall be maintained in good condition for immediate use.

(c) The lessee shall conduct training classes and periodic drills in the deployment and use of pollution control and removal equipment, to ensure that designated personnel can carry out the assignments which are necessary for effective control and removal of oil spilled in or on the ocean.

(d) The lessee shall maintain an inventory of the emergency equipment that is stored on each mobile drilling rig and offshore drilling or production facility as well as an inventory showing the description, application, and location of all pollution control and removal equipment that is immediately available for a major oil spill. In addition, the lessee shall maintain a listing of equipment, material, services, and labor forces that are immediately available for beach cleanup and restoration operations. The inventories shall be updated as changes occur and current copies shall be filed with the Staff annually.

(e) All mobile drilling rigs and offshore drilling or production facilities shall be equipped in a manner that will prevent spilling of contaminants in the ocean. Any fluids spilled shall be collected in a sump(s) that is provided with appropriate pumping equipment, liquid level controls, and alarms to prevent accidental discharge of contaminants into the ocean waters

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

#### § 2141. Critical Operations and Curtailment Plans.

The primary purpose of a Critical Operations and Curtailment Plan is to provide additional precautionary measures to minimize the likelihood of an oil spill incident occurring from offshore drilling and production well work during (1) adverse weather and sea conditions when oil spill containment and recovery equipment, material and techniques are not effective and marine transportation is severely hampered; and (2) the time that oil spill containment and recovery equipment, material, manpower, and transportation thereof are not readily available to the site of operation.

Certain operations performed in drilling and production well work are more critical than others with respect to well control and accidental discharge of oil and gas. This is particularly so when subsurface forations are exposed in the well that are capable of flowing oil and gas to the surface or when the well has been pressured by outside means. It is these critical operations that should be ceased, limited or not commenced in order to minimize the likelihood of an oil spill occurring during adverse weather and sea conditions which could seriously impede both well control and oil cleanup efforts.

The lessee shall file with the Staff, for its approval, a Critical Operations and Curtailment Plan to be followed while conducting drilling and/ or production well work on the lease. A plan shall be filed for each exploratory well as required in Section 2128(d)(2) in order to accommodate different drilling rigs, circumstances and conditions. A separate plan

shall be filed for development drilling and production well work on the lease. These plans shall contain the following:

- (a) A descriptive list of the critical drilling and production well work that is likely to be conducted on the lease, such as:
  - (1) Drilling in close proximity to another well.
- (2) Drilling into a known lost circulation zone or into a zone capable of flowing oil and/or gas.
- (3) Continuation of drilling into zones that are suspected to be capable of flowing oil and/or gas or into zones suspected to be abnormally pressured.
- (4) If zones capable of flowing oil and/or gas are exposed or suspected to be exposed in the well then the following are considered to be critical operations:
  - (A) Pulling out of the hole.
  - (B) Fishing operations.
  - (C) Drill-Stem testing.
  - (D) Wireline logging in open hole.
  - (E) Running casing.
  - (F) Cutting and recovering casing.
  - (G) Perforating casing.
  - (H) Well completion work.
  - (I) Remedial well work.
  - (J) Well stimulation.
- (b) A descriptive list of circumstances or conditions under which the critical drilling and production well work shall be ceased, limited, or not commenced. This list shall be developed from all the factors and conditions relating to the lease and shall take into account but may not to be limited to the following:
- (1) Whether or not well operations are being conducted from a mobile rig or a fixed structure.
- (2) Adverse meteorological or oceanographical conditions exist or are anticipated soon.
- (3) Limited availability and capability of oil containment and cleanup
- (4) Significant increase in oil spill control system response time for any reason.
- (5) Personnel or equipment for conducting a particular critical operation are not available.
- (6) Insufficient supply of drilling mud materials on the drill site for emergency well control purposes.
- (7) Transportation equipment for personnel, supplies and oil spill containment and cleanup equipment is not readily available.
- (8) Construction and maintenance work involving welding, moving heavy equipment, etc. is being performed.
  - (9) Other factors peculiar to the particular lease under consideration.
- (c) When any circumstance or condition listed or described in the plan occurs or other operational limits are encountered, the lessee shall cease, limit, or not commence the affected critical operation(s) as set forth in Section 2141(a).
- (d) Any deviation from the approved plan shall require prior written approval by the Staff. If emergency action requires deviation from the plan, and there is inadequate time to seek the Staff's approval, the Staff shall be notified immediately after said deviation occurs.
- (e) The plan shall be reviewed at least annually and any changes thereto shall be submitted to the Staff for approval.

#### § 2142. Pollution Reports.

- (a) All spills or leakage of oil and liquid pollutants originating from operations on State oil and gas leases shall be reported orally without delay to the United States Coast Guard and to the State Office of Emergency Services in Sacramento. Subsequent to oral notification, a written report shall be filed with the State Lands Commission, stating the source, cause, size of spill and the action taken.
- (b) Lessees shall report or ally to the three authorities indicated in Section 2142(a) any pollution of unknown source or pollution unassociated with lease operations that is observed on or in State waters.

(c) Lessees shall notify one another of information regarding equipment malfunction or of information regarding pollution resulting from another's operation.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301 and 6873(d), Public Resources Code; and Section 11152, Government Code. Reference: Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d), Public Resources Code.

# Article 3.5. Disposal of Royalty Oil, Gas or Other Hydrocarbons

#### § 2150. Purpose.

Whenever the Commission determines that it is in the best interests of the State to take its royalty share of oil, gas, or other hydrocarbons in kind, the Commission shall enter into agreements for the disposition and sale of such oil, gas, or other hydrocarbons in accordance with procedures set forth in this Article.

NOTE: Authority cited: Sections 6108 and 6815.1, Public Resources Code.

#### HISTORY

1. New Article 3.5 (Sections 2150-2163) filed 7-5-73; effective thirtieth day thereafter (Register 73, No. 27).

#### § 2151. Definitions.

As used in this article unless otherwise specified:

- (a) The term "royalty oil" includes oil, gas, natural gasoline, other products extracted from gas, and all other hydrocarbons.
- (b) The term "purchaser" means any person or corporation that has entered into a contract to purchase royalty oil from the State.
- (c) The term "lease" means oil and gas lease, easement, or other agreement for the extraction of oil, gas, or other hydrocarbons from lands owned by the State.
  - (d) The term "lessee" means holder of a lease.
- (e) The term "base price" means, in relation to royalty oil, a price to be determined in accordance with a standard to be adopted by the Commission for each contract to purchase royalty oil and to be included in each such contract when it is adopted pursuant to Section 2153. The standard to be adopted shall relate, to the extent practical, to objective criteria and to data easily ascertainable, such as posted prices or prices paid for products of like quality, taking into account location, so that both the State and a purchaser will be able to establish the base price with reasonable ease and accuracy. Prices paid under any contract to purchase royalty oil pursuant to these rules and regulations shall not, under any circumstances, be used in determining such base price.

#### § 2152. Eligibility to Hold Sales Contracts.

A sales contract for royalty oil shall be issued only to and held by:

- (a) Persons or associations of persons who are citizens of the United States or who have declared their intention of becoming such, or who are citizens of any country, dependency, colony, or province, the laws, customs, and regulations of which permit the grant of similar or like privileges to citizens of the United States.
- (b) Any corporation or corporations organized and existing under and by virtue of the laws of the United States or of any state or territory thereof; or any corporation or corporations 90 per cent or more of the shares of which are owned by persons eligible to hold a lease or permit under subdivision (a) or (c) of this section; or any corporation or corporations 90 per cent or more of the shares of which are owned either by a corporation eligible to hold a lease or permit hereunder, or by any combination of such eligible persons or corporations, or both.
- (c) Any alien person entitled thereto by virtue of any treaty between the United States and the nation or country of which the alien person is a citizen or subject.

#### § 2153. Selection of Royalty Oil.

The Commission shall, in advance, select the lease or leases from which royalty oil will be taken in kind and the particular hydrocarbons to be taken, determine the increments, if any, in which such oil will be sold, and adopt the bid-form, notice inviting bids, bid-proposal, and the sales contract. The proposal shall remain on file in the Commissions' Of-

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fices and shall contain the notice, bid-form, contract, copies of the lease or leases involved, and pertinent production and lease data.

#### § 2154. Bid Factor.

The Commission shall select for each sales contract, prior to offering royalty oil for bid, one of the bid factors listed below:

- \_ per barrel plus the base price.
- \_% plus 100% of the base price. (b)
- per barrel, provided that the purchaser shall at all times (c) \$ pay the bid price or the base price plus a specified percent of the base price as determined by the Commission, whichever is higher.
  - \_\_ bonus plus the base price. (d) \$\_
- \_ per barrel for a specified gravity with a gravity differential schedule as specified in advance by the Commission, provided that the purchaser shall at all times pay the bid price or the base price plus a specified percent of the base price as determined by the Commission, whichever is higher.

The Commission may, in offering a sales contract, require a minimum bid.

#### § 2155. Other Conditions.

Any sales contract issued under the provisions of this article shall contain such other covenants, conditions, requirements, and reservations as may be deemed advisable by the Commission to protect the interests of the State.

#### § 2156. Notice Inviting Bids.

Whenever the Commission elects to dispose of royalty oil by competitive public bid, the Commission shall cause notice of intention to receive bids to be published.

- (a) The notice shall identify the lease from which the oil is to be offered, the proposed point of delivery, the time for receiving and opening bids, and indicate that forms for bidding may be obtained at an office of the Commission. Such notice shall be published at least once in a newspaper of general circulation in the county in which the point of delivery is situated, and may be published at least once in a newspaper of general circulation in the City of Los Angeles, or San Francisco, or Sacramento.
- (b) At the time and place specified in the notice, not earlier than fourteen (14) days after the last date of publication the sealed bids shall be opened publicly and an award shall be made to the highest responsible bidder unless, in the opinion o the Commission, the acceptance of the highest qualified bid is not in the best interests of the State, in which event the Commission may reject all bids. Thereupon new bids may be called for or the Commission may refuse to call for new bids, or the Commission may negotiate and enter into agreements for sale under terms and conditions deemed to be in the best interests of the State. The Commission reserves the right at any time to reject any and all bids or to cancel the invitation to bid.
- (c) At the time of the bid award, the Commission shall direct the Executive Officer or his agent to notify the lessee that the State intends to take royalty oil in kind commencing on the date specified in the sales contract.

#### § 2157. Submission of Bids.

Bids submitted pursuant to a published notice shall contain the following documents:

(a) Two copies of the bid-form completed, and executed. In the event of a joint bid, or a bid by a partnership, each bidder shall execute the bidform. The insertion of any additional condition, qualification, or provision on said bid-form will invalidate the bid. In the case of joint bidding, or bidding by a partnership, bid data shall be submitted as required by Section 1913, and Section 1914, Title 2 of the California Administrative Code. Corporations executing a bid shall submit with the bid evidence of the authority of the officer or officers executing the bid on behalf of the corporation and shall affix the corporate seal upon the signature page of the bid-form.

- (b) Each bidder must submit with his bid evidence of qualification to enter a contract as specified in this Section.
- (c) Each bid submitted pursuant to this notice shall be accompanied by a certified or cashier's check or checks of a responsible bank in California and made payable to the State of California in an amount to be determined by the Commission before the offering as a deposit as evidence of the bidder's good faith.
- (d) Each bidder shall submit with the bid a certified financial statement establishing to the satisfaction of the Commission such bidder's financial ability to undertake and fulfill all obligations under the prospective contract. Said financial statements shall be certified as to their truth and accuracy by each bidder, as a bidder, or by the person by whom or under whose direction the statements were prepared. Said financial statements shall be accurate as of the date of certification, which date shall be not earlier than the date the Notice of Intention herein was first published. Previously prepared financial statements and/or annual reports may be used by bidders provided that (a) such statements and/or reports are certified, as aforesaid, and (b) the bidder submits a certified statement by the bidder or a responsible financial officer of the bidder that there has been no material change in the financial or other condition of the bidder since the date of preparation of said statement and/or report that would impair the bidder's financial ability to undertake and fulfill all obligations of the bidder under the prospective contract. The certification of such financial statement must be signed by the individual or firm by whom the statement was prepared, as well as by the bidder.
- (e) Each bidder shall submit with the bid evidence establishing to the satisfaction of the Commission such bidder's ability to take oil at the point of delivery. An agreement providing for the exchange of royalty oil for their oil or hydrocarbons may be submitted as evidence to establish bidder's ability to take royalty oil at the point of delivery.
- (f) Each bidder shall also submit with the bid information concerning installation and maintenance of metering facilities, shipping pumps, pipelines, storage, loading facilities, or any other facilities that may be required to facilitate said royalty oil deliveries. The installation of any such facilities shall be only with the prior approval of the State.
- (g) Each bidder shall nominate by letter of authority the name and address of a person authorized to give or receive any notice to or from the State Lands Commission with respect to such bidding and to receive refund of sums accompanying an unsuccessful bid. Said letter shall be submitted with the bid and shall be signed by the bidder, and in the case of joint bids shall be signed by each person or other entity joining in said bid. Unless otherwise expressly provided, the person so authorized to receive notice shall, in the case of the successful bidder, be deemed to be the person duly authorized to give and receive notices on behalf of the bidder.

#### § 2158. Term.

Sales contracts for the disposition of royalty oil shall be entered into for a term as determined y the Commission not to exceed five years.

#### § 2159. Delivery Adjustments.

Lessee may make deliveries of royalty oil to purchaser on a regular basis, and adjustments to deliveries, overages, or underages, including quality considerations, will be made up by the last day of the following calendar month.

#### § 2160. Delivery and Dehydration Costs.

The lessee, where so provided in the lease, shall be reimbursed for the actual allowable cost of dehydration of the royalty share of crude oil and, in the case of offshore leases, for the actual cost of delivery of the royalty share of crude oil to onshore storage and transportation facilities. Only those costs approved by the State in writing shall be allowed. The Commission shall select, prior to the bid offer, one of the methods listed be-

- (a) The State shall reimburse the lessee monthly for such costs upon submission of an invoice by the lessee.
- (b) The purchaser shall monthly, or as designated by the State, reimburse the lessee for such costs. Such costs may be deducted by the pur-

Page 311 Register 93, No. 37: 9-10-93 chaser from the amounts to be submitted to the State pursuant to the sales contract.

#### § 2161. Security.

Purchaser shall, at the time of the execution of the contract, furnish and thereafter maintain in favor of the State a good and sufficient bond or other such security in such sum as may be specified by the State Lands Commission, guaranteeing faithful performance by the purchaser of the terms, covenants, and conditions of the contract. Such bond or other such security will be used to indemnify the State for all costs and damages, including, but not limited to, damages caused by default of the purchaser of royalty oil. The cost of the bond or other security shall be paid for by the purchaser. The Commission may in its discretion reduce, eliminate, or reinstate the security requirement during the term of the sales contract.

#### § 2162. Disposition of Royalty Oil in the Event of Default.

In the event purchaser fails to take the royalty oil as provided by the contract, the Executive Officer or his designee is authorized to dispose of the royalty oil in the most expeditious manner possible. All cost incurred therein shall be deemed as a charge against the purchaser. Purchaser shall be responsible to the State for the difference, if any, between the amount of money received by the State in such disposition and the amount due the State pursuant to the sales contract.

#### § 2163. Assignment of Contract.

Any sales contract issued under the provisions of this article may be assigned, subject to approval by the Commission, to any person, association of persons, or corporation who, at the time of the proposed assignment, possesses the qualifications provided in this article. Any assignment shall take effect as of the first day of the month following the approval by the Commission and filing with the Commission of an executed counterpart thereof, together with any bond and proof of qualification of the assignee to take or hold such sales contract. Unless approved by the Commission, no assignment shall be of any effect. Such assignment shall be made upon the express condition that such assignment does not and shall not release or relieve the Assignor from any obligation to the State under the terms of said sales contract, and that the State may hold the Assignor liable for the faithful performance of any and all obligation of the Purchaser under said sales contract; and, further, that the Assignee shall be bound by the terms of said sales contract to the same extent as if such Assignee were the original Purchaser, any conditions in the assignment agreement to the contrary notwithstanding.

# Article 3.6. Operation Manual & Emergency Planning

#### § 2170. General Provisions.

This Article 3.6 pertains to all exploration and production oil and gas facilities on tide and submerged lands under the jurisdiction of the State Lands Commission. For the purposes of this Article only, the term "marine facility" shall not include terminals used exclusively for transferring oil to or from vessels.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301, 6873, 8755, 8756, and 8758, Public Resources Code. Reference: Sections 6005, 6216, 6871, 6871.1, 6873, 8755, 8756 and 8758, Public Resources Code.

#### HISTORY

1. New article 3.6 (sections 2170–2175) and new section filed 9–8–93; operative 10–8–93 (Register 93, No. 37).

#### § 2171. Definitions.

- (a) "Commission" means the California State Lands Commission.
- (b) "Staff" means the Executive Officer or other duly authorized member of the staff of the State Lands Commission.
- (c) "Oil" means any kind of petroleum, liquid, hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil

sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

- (d) "Spill" or "discharge" means any release or discharge of oil or other refuse of any kind from any well or facility into marine waters not authorized by any federal, state, or local government entity.
- (e) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Rivers and Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301, 6873, 8755, 8756, and 8758, Public Resources Code. Reference: Sections 6005, 6216, 6871, 6871.1, 6873, 8755, 8756 and 8758, Public Resources Code.

#### HISTORY

1. New section filed 9-8-93; operative 10-8-93 (Register 93, No. 37).

#### § 2172. Administration.

The Staff shall administer this Article 3.6 and shall thereby seek to provide for the prevention and elimination of any contamination or pollution of the ocean and tidelands, and marine waters for the prevention of waste, for the conservation of natural resources, and for the protection of human health and safety, and the environment.

NOTE: Authority cited: Sections 6103, 6108, 6216, 6301, 6873, 8755, 8756, and 8758, Public Resources Code. Reference: Sections 6005, 6216, 6871, 6871.1, 6873, 8755, 8756 and 8758, Public Resources Code.

#### HISTORY

1. New section filed 9-8-93; operative 10-8-93 (Register 93, No. 37).

#### § 2173. General Requirements.

- (a) Each operator of a marine facility shall prepare an operations manual describing equipment and procedures which the operator employs or will employ to protect the public health and safety and the environment and to prevent oil spills.
- (b) The operation manual shall demonstrate compliance with all applicable marine facility operating rules and regulations of the State Lands Commission and the lease terms (if applicable).
- (c) Copies of the manual shall be available and accessible to every employee at the field facility and at the next supervising level location. Two current approved copies shall be filed with the State Lands Commission Mineral Resources Management Division Staff.

NOTE: Authority cited: Sections 6108, 6216, 8755, and 8758, Public Resources Code. Reference: Sections 6108, 6216, 6873(b), 8755 and 8758, Public Resources Code.

#### HISTORY

1. New section filed 9-8-93; operative 10-8-93 (Register 93, No. 37).

#### § 2174. Manual Review.

- (a) Submission of Manual.
- (1) The operations manual for any existing facility shall be submitted to Staff for review and approval within one year of the effective date of these regulations.
- (2) For any facilities not presently is existence, and operations manual shall be submitted to Staff for review and approval as part of the application for approval of the facility.
- (3) Staff shall review and respond to the operator within 90 days after a complete application for review has been submitted and acknowledged.
  - (b) Updates and Changes to Approved Manual
  - (1) The operations manual shall be kept current at all times.
- (2) Whenever any routine changes (administrative or clerical) is made in the operation, an update amendment reflecting that change shall be sent to Staff within 30 days.
- (3) Any substantial changes to the manual or its content shall require prior approval by Staff. A substantial change is one which is non-routine, or which would increase or decrease the ability of the operator to respond to a spill, to provide for personnel safety, or to protect the environment.
- (4) Subsequent reviews will be required as necessary when facility operations or technology changes, or when the Commission finds that the manual of any operator is no longer consistent with the provisions of this article or other rules, regulations, or guidelines of the Commission. Staff shall review and respond to the operator within 90 days after a complete application for review has been submitted and acknowledged.

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- (c) Denial
- (1) Approval shall be denied if the Operations Manual does not comply with the conditions set forth in this article.
- (2) If approval is denied, Staff shall notify the operator of the reasons for denial and provide an explanation of those actions necessary to secure approval.
  - (d) Appeal
- (1) If Staff denies approval of the Operations Manual, the operator may appeal this decision by submission of a written appeal to the Commission. Any appeal must be submitted within 10 calendar days from the date the operator receives notice that approval of the manual has been denied. The request must contain the basis for the appeal and provide evidence which rebuts the basis for the Staff's denial of the manual.
- (2) Upon receipt of an appeal, the Staff shall place the appeal on the calendar for the next Commission meeting taking place at least thirty (30) days after the appeal is received. The Commission may consider the appeal at that meeting or may delay consideration until a later meeting. Within 15 days after the Commission makes a decision on the appeal, the Staff shall send the operator written notice as to the Commission's decision.

#### (e) Proof of Approval

The operator shall keep the Letter of Approval filed in the front of the approved operations manual that is kept on the facility. The approval letter shall be presented upon request to any official representing the Commission or Administrator.

NOTE: Authority cited: Sections 6108, 6216, 8755, 8756, and 8758, Public Resources Code. Reference: Sections 6108, 6216, 6873(b), 8755 and 8758, Public Resources Code.

#### HISTORY

1. New section filed 9-8-93; operative 10-8-93 (Register 93, No. 37).

#### § 2175. Manual Content.

- (a) The manual shall be arranged in a logical order and with clearly defined tabs for quick reference to emergency plans and procedures, a comprehensive table of contents and numbered pages.
  - (b) Each manual shall as a minimum include the following:
- (1) Location: Appropriate maps, charts and geographic descriptions shall be included, indicating clearly the location of the facility and its relationship to nearby geographic features.
- (2) Ownership and Responsibility: Information shall be included identifying the owner or owners of the facility and all those who may be responsible for the operation of the facility or for implementation of operation or contingency plans. Addresses and telephone numbers shall be included and kept current for each person or entity listed.
- (3) Purpose: The manual shall include general explanations of the purposes of the facility and its various components.
- (4) Personnel: A listing of operating staff positions shall be provided, showing the chain of command and the responsibility of each position. Employee qualifications for responsible positions must be outlined and staffing levels of the facility must be justified. On any facility which does not maintain 24—hour surveillance, justification and description of safety and security systems shall be discussed.
  - (5) Description of Operations:
- (A) The manual shall include plot plans of the facility and flow diagrams for each of the production flow streams, including oil, gas, and water injection. Each major component and associated equipment including, but not limited to, wells, piping, process vessels, tanks compressors, pumps, and alarm, control and safety systems shall be narratively described, including function, capacity, physical size and pressure rating.
- (B) Detailed information regarding preventives maintenance programs and procedures shall be provided.
- (6) Personnel Safety: Detailed information shall be provided regarding equipment and procedures employed for the purpose of ensuring personnel safety, including, but not limited to, information concerning the following:
  - (A) Personnel safety;

- (B) Safety responsibilities of each personnel position;
- (C) Training;
- (D) Safety Drills;
- (E) Inspection of Personnel Safety Equipment; and
- (F) Compliance with applicable provisions of Division 5 of the Labor Code and regulations adopted pursuant thereto.
- (7) Systems Safety: Detailed information shall be provided regarding equipment and procedures employed for the purpose of preventing oil discharges or other accidents which may harm or threaten public health and safety or the environment, including, but not limited to, information concerning the following:
  - (A) Systems Safety Equipment;
  - (B) Systems Safety Training;
- (C) All operations and procedures employed for the prevention of oil discharges or other pollution; and
  - (D) Inspection and testing of system safety equipment and operations.
- (8) Automatic Control Systems and Equipment: Subsection (b)(7) shall include information concerning the identification, use and operation of any safety equipment that can be operated remotely, automatically, or by pre–program and any appropriate manual override information. The following information should be included:
  - (A) Normal process and operation;
  - (B) Safety shut-down; and
  - (C) Emergency shut-down
- (9) Production Processing: All production streams must be identified, with the minimum following information included for each fluid:
  - (A) Chemical makeup;
  - (B) Fluid volumes;
  - (C) Pressures:
  - (D) Flow rates;
  - (E) Temperatures;
  - (F) Appearance;
  - (G) Odor;
  - (H) Instructions for safe emergency handling; and
  - (I) Any hazards which might be encountered in dealing with the fluid.
- (10) Oil Spill Contingency and Hazardous Materials Plans: The manual shall include or have attached (or otherwise incorporate by reference) copies of the following:
- (A) Any oil spill contingency plan required under the lease issued by the Commission or under Chapter 7.4 of Division 1 of Title 2 (§§8670.1 *et seq.*) of the Government Code; and
- (B) For each fluid identified under subsection (b)(9) of this section, any business plan for responding to hazardous materials releases required under Chapter 6.95 of Division 20 of the Health and Safety Code.
- (11) Fire Fighting Response: The manual shall also include information regarding response to fire, including at minimum the following:
- (A) Information regarding primary response, including, but not limited to, detailed descriptions of response equipment and their use and operation, personnel, training, drills, communications equipment and procedures, and evacuation plans; and
- (B) Information regarding secondary response, including, but not limited to, detailed descriptions of response equipment and their use and operation, use of mutual aid organization or cooperatives for fire suppression, interagency agreements or memoranda of understanding, and communications equipment and procedures.
  - (12) Other Emergency Response Plans.
- (A) In addition to the plans set forth in subsections (b)(10) and (b)(11) of this section, any other emergency response plans shall also be included in or attached (or otherwise incorporate by reference) to the manual.
- (B) Every plan submitted shall have included or attached the names and telephone and facsimile numbers of all relevant contact personnel with the facility operator, State and Federal response agencies, local fire, police, and medical responders, security personnel, and mutual aid cooperatives or organizations.
- (C) Among the additional plans to be submitted shall be at minimum the following:

- 1. A Well Control Plan (Drilling and Workover);
- 2. A Critical Operations and Curtailment Plan (Drilling & Production, or substantial construction project);
  - 3. An H<sub>2</sub>S Contingency Plan (if applicable);
  - 4. A Facility Emergency Evacuation Plan;
  - 5. Natural Disaster Response Plans; and
  - 6. Security Plans
- (13) Communication System: The manual shall describe in detail how communications systems employed at the facility provide for redundancy and interface with other area facilities, emergency responders, and agencies.
- (14) Operational Support: The manual shall also include a description of normal and emergency operational support, including, but not limited to, the type and use of helicopters and vessels.
  - (A) Helicopters
  - (B) Boats & Vessels
  - (C) Other
- (15) Other Information: The manual shall also include any other information necessary or appropriate for the Commission and for those working at the facility to know and understand the equipment, operations and systems employed at the facility both for ordinary operations, generally, and for the specific purpose of preventing harm to public health and safety or to the environment.

NOTE: Authority cited: Sections 6108, 6216, 8755, 8756, and 8758, Public Resources Code. Reference: Sections 6108, 6216, 6873(b), 8755 and 8758, Public Resources Code.

#### HISTORY

1. New section filed 9-8-93; operative 10-8-93 (Register 93, No. 37).

## Article 4. Leases and Prospecting Permits for Minerals Other Than Oil and Gas

#### § 2200. Character and Extent of Lands.

- (a) Lands subject to lease include:
- (1) Those containing known deposits of minerals;
- (2) Those embraced in a prospecting permit not subject to preferential lease.
- (b) For tide and submerged lands and those underlying navigable streams and lakes the commission may determine the extent thereof subject to lease under any application. For all other lands the application shall be for a compact area and may include any number of acres not in excess of 160.
- (c) The commission may include in its lease offer, areas adjacent to that for which application has been made, should it determine that such additional areas contain commercially valuable mineral deposits.
- (d) Lands subject to prospecting permits are those not classified by the commission as containing commercially valuable mineral deposits.

#### § 2201. Duration of Leases and Permits.

- (a) Leases (both preferential and bid) may be issued for a term of 20 years, with option of renewal for successive periods of 10 years upon such terms and conditions as may be prescribed by the commission at the time of renewal.
- (b) Prospecting permits are limited to a period not exceeding two years, extendable for a period of an additional one year at the discretion of the commission.

#### § 2202. Prospecting Permit Procedures.

(a) Applications. Any person desiring to apply for a prospecting permit on any land under the jurisdiction of the commission, shall file with

- the State Lands Division, 100 Oceangate, Suite 300, Long Beach, California 90802, a written application containing:
- (1) Name, address, and status of citizenship of applicant; if applicant is a corporation, the corporate name and name of president, secretary, and officer authorized to execute contracts and leases.
  - (2) A description of the state lands involved.
  - (3) A statement of the use proposed.
  - (4) A statement of the character and use of adjoining lands.
  - (5) A statement of the nature of the deposits proposed to be developed.
- (b) If the applicant has posted a notice on the lands and recorded a copy thereof, as provided by Section 6892 of the Public Resources Code, the application shall so state, describing the monument erected on the lands, giving the location thereof, and stating the dates of posting and recording. The recorded copy of the notice shall be attached to the application.
  - (c) The application shall be accompanied by:
  - (1) a filing fee, as provided in Section 1903(a)
- (2) a permit fee deposit equal to the amount of \$1 per acre for each acre within the desired permit area.
  - (3) an expense deposit as provided in Section 1903.2.
- (d) Upon the acceptance of an application, the commission shall determine the royalty rate to be paid under any ensuing preferential lease.
- (e) Upon authorization by the commission, permit forms shall be submitted for the applicant's acknowledged or witnessed execution.

#### HISTORY

- 1. Amendment filed 8–17–55 as an emergency; designated effective 9–7–55 (Register 55, No. 12).
- 2. Amendment of subsection (c) filed 4–10–69; effective thirtieth day thereafter (Register 69, No. 15).
- 3. Amendment of subsection (a) filed 3–2–73 as procedural and organizational; effective upon filing (Register 73, No. 9).
- 4. Amendment of subsection (c) filed 2–2–77; designated effective 3–1–77 (Register 77, No. 6).

#### § 2203. Preferential Lease Procedures.

- (a) At any time during the life of a permit, the permittee may apply for a preferential lease upon discovery of a commercially valuable deposit of minerals within the permit area.
- (b) An application under this section shall contain, in addition to the data required in Section 2202(a), an affidavit of some responsible person having knowledge of the facts averring that a commercially valuable mineral deposit has been discovered within the permit area.
- (c) No lease shall be issued for unsurveyed lands. Upon request of the applicant, accompanied by a deposit of an amount sufficient to cover the costs of a survey, surveying services will be rendered by the Division of State Lands.
- (d) Upon determination by the Division of State Lands that a commercially valuable mineral deposit has been discovered and that the applicant is entitled to a preferential lease, the commission may, subject to the payment of the rental for the first year, authorize the execution and delivery of an appropriate lease.

#### HISTORY

1. Amendment filed 8–17–55 as an emergency; designated effective 9–7–55 (Register 55, No. 12).

#### § 2204. Procedures for Nonpreferential Leases.

Lands known to contain commercially valuable deposits of minerals not subject to a preferential lease under a prospecting permit, may be leased pursuant to a published notice of intention to receive bids. (See Section 1908). The minimum expense deposit required shall be determined by the Commission under the provisions of Section 1903.2.

[The next page is 313.]

#### HISTORY

- 1. Amendment filed 4–10–69; effective thirtieth day thereafter (Register 69, No. 15)
- 2. Amendment filed 2-2-77; designated effective 3-1-77 (Register 77, No. 6).

#### § 2205. Statements and Reports.

On or before the fifteenth day of each month, a lessee or permittee shall deliver to the Division of State Lands statements in the form prescribed, showing the work performed upon the leased or permitted area and the amount, quality, and value of all minerals produced, shipped or sold during the preceding calendar month. Longer intervals for such reports may be authorized but such authorization shall be granted only in writing and may be revoked or changed at any time upon written notice to the lessee or permittee.

# Article 4.1. Leases for Exploration and Development of Geothermal Resources

#### § 2249. Competitive Lease Sales.

Upon nomination, the Commission may designate State lands for lease by competitive bidding to the highest responsible qualified bidder. Such nominations may be made by holders of exploration permits or any other party qualified to hold a lease, pursuant to Public Resources Code Section 6801. Any State lands may be nominated and designated for competitive lease sale; provided that lands included within a valid and effective prospecting permit may be nominated and designated but may not be leased prior to the termination of that permit.

NOTE: Authority cited: Section 6108, Public Resources Code. Reference: Sections 6910 and 6911, Public Resources Code.

#### HISTORY

Repealer of Article 4.1 (Sections 2248–2267) and new Article 4.1 (Sections 2249 and 2250) filed 11–5–82; effective thirtieth day thereafter (Register 82, No. 45). For prior history, see Registers 81, No. 15 and 79, No. 28.

#### § 2250. Surface Owner Notification.

When a competitive bid has been held for lands described in subdivision (a) of Public Resources Code Section 6912, and the Commission has determined the highest qualified bid, the Commission shall notify the surface owner of such bid. The notice shall be deemed to be effective when received by the surface owner or five days after being sent, whichever occurs first.

NOTE: Authority cited: Section 6108, Public Resources Code. Reference: Sections 6911 and 6912(b), Public Resources Code.

# Article 4.5. Marine Invasive Species Control Fund Fee

#### § 2270. Marine Invasive Species Control Act; Definitions.

For purposes of this Article, the following definitions apply.

- (a) "Voyage" means any transit by a vessel destined for any California port from a port or place outside of the coastal waters of the state.
- (b) "Waters of the state" means any surface waters, including saline waters that are within the boundaries of the state.

NOTE: Authority cited: Section 71215(b), Public Resources Code. Reference: Sections 71200(m) and (o) and 71215, Public Resources Code.

#### HISTORY

- 1. New article 4.5 (sections 2270–2271) and section filed 12–28–99 as an emergency; operative 1–1–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–1–2000 or emergency language will be repealed by operation of law on the following day.
- 2. New article 4.5 (sections 2270–2271) and section refiled 3–6–2000 as an emergency; operative 4–30–2000 (Register 2000, No. 10). A Certificate of Compliance must be transmitted to OAL by 8–28–2000 or emergency language will be repealed by operation of law on the following day.
- 3. Certificate of Compliance as to 3–6–2000 order transmitted to OAL 7–10–2000 and filed 8–15–2000 (Register 2000, No. 33).
- 4. Amendment of article heading, section heading, section and NOTE filed 1–15–2004 as an emergency; operative 2–1–2004 (Register 2004, No. 3). A Certificate of Compliance must be transmitted to OAL by 6–1–2004 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-15-2004 order transmitted to OAL 4-21-2004 and filed 6-3-2004 (Register 2004, No. 23).

### § 2271. Fee Schedule for Marine Invasive Species Control

- (a) Base and Annual Qualifying Voyage Fee. For the first 12-month period of this regulation commencing on August 1, 2008, the Base Fee required under Public Resources Code Section 71215 is six hundred twenty five dollars (\$625) per vessel voyage. After the first 12-month period of this regulation, the owner or operator of a vessel shall pay an amount per qualifying voyage, called the "Annual Qualifying Voyage Fee", which is determined in accordance with subsection (b) entitled "Annual Qualifying Voyage Fee Adjustment Formula", of this section.
  - (b) Annual Qualifying Voyage Fee Adjustment Formula
- (1) The following formula, hereafter called the "Adjustment Formula," shall be used to determine the adjusted Annual Qualifying Voyage Fee for each year subsequent to 2008:

- (2) For the purposes of this division, "CPI" means the value indicated for each specified month in the U.S. Department of Labor, Bureau of Labor Statistics "CPI Detailed Report" published regularly, with reference to the numeric reported indexes for a specified month of such year. Consumer Price Index for All Urban Consumers, West Region (1982–84 = 100), CUUR0400SAO or its successor index. The December CPI value for All Urban Consumers, West Region will be used in the fee adjustment formula.
- (3) Except as otherwise provided in this Subsection (b), the Annual Qualifying Voyage Fee shall be adjusted annually as of the first of August of each year regardless of whether application of the Adjustment Formula results in an Adjusted Annual Qualifying Voyage Fee which is greater or lesser than the Previous Year's Fee, but the Adjusted Annual Qualifying Voyage Fee will never be lower than the Base Fee.
- (4) On or about the 15th day of January of each year, Commission staff shall perform the calculation and publish on the Commission's web site, the amount of the Annual Qualifying Voyage Fee as recalculated each year.
- (c) The Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of the fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.
- (d) The fee shall be collected from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.
- (e)(1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the fee required under Public Resource Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the fee, taking into account the provisions of Public Resources Code Sections 71200 through 71216.
- (2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

NOTE: Authority cited: Section 71215(b), Public Resources Code. Reference: Sections 71200 and 71215, Public Resources Code.

#### **HISTORY**

- New section filed 12–28–99 as an emergency; operative 1–1–2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5–1–2000 or emergency language will be repealed by operation of law on the following day.
- 2. Repealer and new section filed 3-6-2000 as an emergency; operative 4-30-2000 (Register 2000, No. 10). A Certificate of Compliance must be trans-

- mitted to OAL by 8-28-2000 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 3–6–2000 order transmitted to OAL 7–10–2000 and filed 8–15–2000 (Register 2000, No. 33).
- 4. Amendment of subsection (a) filed 5–2–2002 as an emergency; operative 7–1–2002 (Register 2002, No. 18). A Certificate of Compliance must be transmitted to OAL by 10–29–2002 or emergency language will be repealed by operation of law on the following day.
- 5. Certificate of Compliance as to 5-2-2002 order transmitted to OAL 10-16-2002 and filed 11-14-2002 (Register 2002, No. 46).
- 6. Amendment of section heading and subsection (a), new subsections (b) and (c) and subsection relettering filed 1-15-2004 as an emergency; operative 2-1-2004 (Register 2004, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-1-2004 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 1–15–2004 order transmitted to OAL 4–21–2004 and filed 6–3–2004 (Register 2004, No. 23).
- Amendment of subsection (a) filed 8-4-2005; operative 9-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 31).
- 9. Amendment of subsection (a), new subsections (b)–(b)(4) and subsection relettering filed 7–8–2008; operative 8–1–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 28).

#### Article 4.6. Ballast Water Regulations for Vessels Arriving at California Ports or Places After Departing from Ports or Places Within the Pacific Coast Region

### § 2280. Purpose, Applicability, and Date of Implementation.

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.6 of the California Code of Regulations is to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable.
- (b) The provisions of Article 4.6 apply to all vessels arriving at a California port or place carrying ballast water from another port or place within the Pacific Coast Region. For the purposes of Article 4.6 all ports and places in the San Francisco Bay area east of the Golden Gate bridge including the Ports of Stockton and Sacramento, shall be construed as the same California port or place; and the Ports of Los Angeles, Long Beach and the El Segundo marine terminal shall be construed as the same California port or place.
- (c) The provisions of Article 4.6 do not apply to vessels that arrive at a California port or place after departing from ports or places outside of the Pacific Coast Region.
- (d) The provisions of these regulations become effective 180 days after they have been filed with the Secretary of State.

NOTE: Authority cited: Sections 71201.7 and 71204.5, Public Resources Code. Reference: Sections 71201 and 71204.5, Public Resources Code.

#### HISTORY

1. New article 4.6 (sections 2280–2284) and section filed 9–23–2005; operative 3–22–2006 (Register 2005, No. 38).

#### § 2281. Safety of Ballasting Operations.

- (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.
- (b)(1) The master, operator, or person in charge of a vessel is not required by this provision to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.
- (2) If a determination described in subsection (b)(1) is made, the master, operator, or person in charge of the vessel shall take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimize the discharge

- of ballast water containing nonindigenous species into the waters of the state, or waters that may impact the waters of the state.
- (c) Nothing in this provision relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

NOTE: Authority cited: Sections 71201.7 and 71204.5, Public Resources Code. Reference: Sections 71203 and 71204.5, Public Resources Code.

#### HISTORY

1. New section filed 9-23-2005; operative 3-22-2006 (Register 2005, No. 38).

#### § 2282. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this Article:

- (a) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.
  - (b) "Commission" means the California State Lands Commission.
- (c) "Exchange" means to replace the water in a ballast tank using either of the following methods:
- (1) "Flow through exchange," which means to flush out ballast water by pumping three full volumes of near-coastal water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.
- (2) "Empty/refill exchange," which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with near—coastal waters.
- (f) "Near-coastal waters" means waters that are more than 50 nautical miles from land and at least 200 meters (656 feet, 109 fathoms) deep.
- (g) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.
- (h) "Vessel" means a vessel of 300 gross registered tons or more. Note: Authority cited: Sections 71201.7 and 71204.5, Public Resources Code. Reference: Sections 71200(e), (j) and (n), 71201, 71204 and 71204.5, Public Resources Code.

#### HISTORY

1. New section filed 9-23-2005; operative 3-22-2006 (Register 2005, No. 38).

#### § 2283. Alternatives.

- (a) Petitions for Alternatives.
- (1) Any person subject to these regulations may submit a petition to the Commission for alternatives to the requirements of Article 4.6 as applied to the petitioner.
- (2) All petitions for alternatives must be submitted in writing. A petition may be in any form, but it must contain all data and information necessary to evaluate its merits in order to fulfill the purposes of these regulations.
  - (b) Approval of Alternatives.
- (1) The Commission may approve any proposed alternatives to the requirements of Article 4.6 if it determines that the proposed alternatives will fulfill the purpose of these regulations as outlined in subsection (a) of Section 2280 of this Article.
- (2) If the Commission approves any proposed alternatives under this section, a letter of approval shall be issued to the petitioner setting forth the findings upon which the approval is based.
- (3) The Commission may withdraw the letter of approval of any alternative requirements at any time if it finds that the person or persons subject to these regulations have not complied with the approved alternative requirements.
- (4) Withdrawal of a letter of approval under this section shall be effective upon receipt by the petitioner of written notification of the withdrawal from the Commission.

NOTE: Authority cited: Sections 71201.7 and 71204.5, Public Resources Code. Reference: Sections 71201 and 71204.5, Public Resources Code.

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#### HISTORY

1. New section filed 9-23-2005; operative 3-22-2006 (Register 2005, No. 38).

#### § 2284. Ballast Water Management Requirements.

- (a) The master, operator, or person in charge of a vessel that arrives at a California port or place from another port or place within the Pacific Coast Region shall employ at least one of the following ballast water management practices:
- (1) Exchange the vessel's ballast water in near-coastal waters, before entering the waters of the state, if that ballast water has been taken on in a port or place within the Pacific Coast region.
  - (2) Retain all ballast water on board the vessel.
- (3) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.
- (4) Discharge the ballast water to a reception facility approved by the commission.
- (5) Under extraordinary circumstances where compliance with subsections (a)(1) through (a)(4) of this section is not practicable, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

NOTE: Authority cited: Sections 71201.7 and 71204.5, Public Resources Code. Reference: Sections 71200, 71204 and 71204.5, Public Resources Code.

#### HISTORY

1. New section filed 9-23-2005; operative 3-22-2006 (Register 2005, No. 38).

# Article 4.7. Performance Standards for the Discharge of Ballast Water for Vessels Operating in California Waters

### § 2291. Purpose, Applicability, and Date of Implementation.

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.7 of the California Code of Regulations is to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable.
- (b) The provisions of Article 4.7 apply to all vessels that discharge ballast water in California waters except those that are exempt under Section 71202, Public Resources Code.
- (c) The provisions of these regulations become effective on or before January 1, 2008.

NOTE: Authority cited: Sections 71201.7 and 71205.3, Public Resources Code. Reference: Sections 71201.7 and 71205.3, Public Resources Code.

#### **HISTORY**

1. New article 4.7 (sections 2291–2296) and section filed 10–15–2007; operative 1-1-2008 (Register 2007, No. 42).

#### § 2292. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this Article:

- (a) "Ballast Water Capacity" means the total volumetric capacity of any tanks, spaces, or compartments on a vessel used for carrying, loading or discharging ballast water, including any multi-use tank, space or compartment designed to allow carriage of ballast water.
  - (b) "Board" means the State Water Resources Control Board
- (c) "Colony Forming Unit" means a measure of viable bacterial numbers.
  - (d) "Commission" means the California State Lands Commission.
  - (e) "Constructed" means a stage of vessel construction where:
  - (1) the keel is laid; or
  - (2) construction identifiable with a specific vessel begins; or

- (3) assembly of the vessel has commenced comprising at least 50 tonnes or 1 percent of the estimated mass of all structural material, whichever is less; or
  - (4) the vessel undergoes a major conversion.
  - (f) "Major Conversion" means a conversion of a vessel;
- (1) which changes its ballast water carrying capacity by 15 percent or greater; or
  - (2) which changes the vessel type; or
- (3) which, in the opinion of the Commission, is projected to prolong its life by ten years or more; or
- (4) which results in modifications to its ballast water system other than component replacement–in–kind. Conversion of a vessel to meet the provisions of this Article shall not be deemed to constitute a major conversion for the purposes of this Section.
- (g) "Vessel" means a vessel of 300 gross registered tons or more. NOTE: Authority cited: Sections 71201.7 and 71205.3, Public Resources Code. Reference: Sections 71200, 71201.7 and 71205.3, Public Resources Code.

#### **HISTORY**

1. New section filed 10–15–2007; operative 1–1–2008 (Register 2007, No. 42).

### § 2293. Interim Performance Standards for Ballast Water Discharges.

Subject to the Implementation Schedule in Section 2294, before discharging ballast water in waters subject to the jurisdiction of California, the master, owner, operator, or person in charge of a vessel to which this section applies shall conduct ballast water treatment so that ballast water discharged will contain:

- (a) No detectable living organisms that are greater than 50 micrometers in minimum dimension;
- (b) Less than 0.01 living organisms per milliliter that are less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;
- (c) For living organisms that are less than 10 micrometers in minimum dimension:
  - (1) less than 1,000 bacteria per 100 milliliter;
  - (2) less than 10,000 viruses per 100 milliliter;
  - (3) concentrations of microbes that are less than:
  - (A) 126 colony forming units per 100 milliliters of Escherichia coli;
- $\left(B\right)33$  colony forming units per 100 milliliters of Intestinal enterococci ; and
- (C) I colony forming unit per 100 milliliters or I colony forming unit per gram of wet weight of zoological samples of Toxicogenic Vibrio cholerae (serotypes 01 and 0139)

NOTE: Authority cited: Sections 71201.7 and 71205.3, Public Resources Code. Reference: Sections 71201.7 and 71205.3, Public Resources Code.

#### HISTORY

1. New section filed 10-15-2007; operative 1-1-2008 (Register 2007, No. 42).

### § 2294. Implementation Schedule for Interim Performance Standards for Ballast Water Discharges.

Section 2293 applies to vessels in accordance with the following schedule:

- (a) Beginning January 1, 2009, for vessels constructed on or after that date with a ballast water capacity of less than or equal to 5,000 metric tons.
- (b) Beginning January 1, 2012, for vessels constructed on or after that date with a ballast water capacity greater than 5,000 metric tons.
- (c) Beginning January 1, 2014, for vessels constructed before January 1, 2009, with a ballast water capacity of 1,500 metric tons or more but not more than 5,000 metric tons.
- (d) Beginning January 1, 2016, for vessels constructed before January 1, 2009, with a ballast water capacity of less than 1,500 metric tons or greater than 5,000 metric tons.

NOTE: Authority cited: Sections 71201.7 and 71205.3, Public Resources Code. Reference: Sections 71201.7 and 71205.3, Public Resources Code.

#### HISTORY

1. New section filed 10-15-2007; operative 1-1-2008 (Register 2007, No. 42).

### § 2295. Implementation Schedule for Final Performance Standards for Ballast Water Discharges.

Beginning January 1, 2020, before discharging ballast water in waters subject to the jurisdiction of California, the master, owner, operator, or person in charge of a vessel to which this section applies shall conduct ballast water treatment so that ballast water discharged will contain zero detectable living organisms for all organism size classes.

NOTE: Authority cited: Sections 71201.7 and 71205.3, Public Resources Code. Reference: Sections 71201.7 and 71205.3, Public Resources Code.

#### HISTORY

1. New section filed 10–15–2007; operative 1–1–2008 (Register 2007, No. 42).

### § 2296. Delay of Application for Vessels Participating in Promising Technology Evaluations.

If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the Commission approves that application on or before January 1, 2008, the Commission shall deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed five years from the date that the interim performance standards would apply to that vessel.

(a) The Commission may rescind its approval of the system at any time if the Commission, in consultation with the Board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the Commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in performance, human safety, or environmental soundness relative to anticipated performance, or that the applicant has failed to provide the Commission with required test results and evaluations.

NOTE: Authority cited: Sections 71201.7, 71204.7 and 71205.3, Public Resources Code. Reference: Sections 71201.7, 71204.7 and 71205.3, Public Resources Code.

#### HISTORY

1. New section filed 10-15-2007; operative 1-1-2008 (Register 2007, No. 42).

# Article 5. Marine Terminals Inspection and Monitoring

#### § 2300. The Marine Facilities Division.

- (a) There is in the Staff of the California State Lands Commission the Marine Facilities Division, which has the primary responsibility for carrying out the provisions of the Lempert–Keene–Seastrand Oil Spill Prevention and Response Act of 1990 within the Commission's jurisdiction.
- (b) The primary office of the Division is at 200 Oceangate, Suite 900, Long Beach, California 90802–4335, telephone (562) 499–6312.

NOTE: Authority cited: Sections 8751, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 6-10-91 as an emergency; operative 6-10-91 (Register 91, No. 33). A Certificate of Compliance must be transmitted to OAL by 10-8-91 or emergency language will be repealed by operation of law on the following day.
- New section refiled 8-23-91 as an emergency; operative 8-23-91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 12-23-91 or emergency language will be repealed by operation of law on the following day.
- 3. New section filed 12–5–91; operative 12–5–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).
- 4. Repealer and new section filed 11–20–92; operative 12–21–92 (Register 92, No. 47).
- Editorial correction amending article and section headings (Register 93, No. 10).
- Amendment of article 5 heading, section heading and section filed 3–9–99; operative 4–8–99 (Register 99, No. 11).
- Change without regulatory effect amending subsection (b) filed 12–20–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 51).

### § 2301. The Marine Facilities Inspection and Management Division.

NOTE: Authority cited: Sections 6005, 6105, 6108, 6216, 6301, 6321, 6501, 6501.1, 6501.2, 8751, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### HISTORY

- New section filed 6-10-91 as an emergency; operative 6-10-91 (Register 91, No. 33). A Certificate of Compliance must be transmitted to OAL by 10-8-91 or emergency language will be repealed by operation of law on the following day.
- New section refiled 8-23-91 as an emergency; operative 8-23-91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 12-23-91 or emergency language will be repealed by operation of law on the following day.
- 3. New section filed 12–5–91; operative 12–5–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).
- 4. Repealer filed 11-20-92; operative 12-21-92 (Register 92, No. 47).

### § 2302. Compliance with Federal, State and Local Regulations.

NOTE: Authority cited: Sections 8751, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### HISTORY

- New section filed 6-10-91 as an emergency; operative 6-10-91 (Register 91, No. 33). A Certificate of Compliance must be transmitted to OAL by 10-8-91 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 8-23-91 as an emergency; operative 8-23-91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 12-23-91 or emergency language will be repealed by operation of law on the following day.
- 3. New section filed 12–5–91; operative 12–5–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).
- 4. Repealer filed 11-20-92; operative 12-21-92 (Register 92, No. 47).

#### § 2303. Inspections and Monitoring.

NOTE: Authority cited: Sections 8751, 8755 and 8757, Public Resources Code. Reference: Sections 8670.25 through 8670.37.5, Government Code; Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 6-10-91 as an emergency; operative 6-10-91 (Register 91, No. 33). A Certificate of Compliance must be transmitted to OAL by 10-8-91 or emergency language will be repealed by operation of law on the following day.
- New section refiled 8-23-91 as an emergency; operative 8-23-91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 12-23-91 or emergency language will be repealed by operation of law on the following day.
- 3. New section filed 12–5–91; operative 12–5–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).
- 4. Repealer filed 11-20-92; operative 12-21-92 (Register 92, No. 47).

#### § 2304. Prior Notice of Transfer Operation.

NOTE: Authority cited: Sections 8751, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### HISTORY

- New section filed 6-10-91 as an emergency; operative 6-10-91 (Register 91, No. 33). A Certificate of Compliance must be transmitted to OAL by 10-8-91 or emergency language will be repealed by operation of law on the following day.
- New section refiled 8–23–91 as an emergency; operative 8–23–91 (Register 92, No. 3). A Certificate of Compliance must be transmitted to OAL 12–23–91 or emergency language will be repealed by operation of law on the following day.
- 3. New section filed 12–5–91; operative 12–5–91 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).
- 4. Repealer filed 11-20-92; operative 12-21-92 (Register 92, No. 47).

#### § 2305. Purpose, Applicability and Date of Implementation.

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 5 of the California Code of Regulations is to provide the best achievable protection of the public health and safety and of the environment by using the best achievable technology.
  - (b) The provisions of this article shall not apply to:
- (1) Oil transfer operations conducted at offshore drilling and production platforms
- (2) Tank cleaning operations which begin after the removal of cargo or fuel from any tank vessel or barge.
- (3) Oil transfer operations to or from vessels other than tank vessels or barges if such vessels have oil carrying capacities of less than 250 barrels.

(c) Unless otherwise specified in these regulations any new sections or modifications to existing sections shall become effective 30 days after they have been filed with the Secretary of State.

NOTE: Authority cited: Sections 8751, 8755 and 8757, Public Resources Code Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### History

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- New subsection (b)(3) and amendment of subsection (c) filed 10-5-94; operative 11-4-94 (Register 94, No. 40).
- Amendment of subsection (c) filed 3-9-99; operative 4-8-99 (Register 99, No. 11).

#### § 2310. Alternative Requirements or Exemptions.

- (a) Petitions for Alternative Requirements or Exemptions.
- (1) Any person subject to these regulations may submit a petition to the Division Chief for alternative requirements or exemptions to the requirements of Article 5.
- (2) All petitions for alternative requirements or exemptions must be submitted in writing. A petition may be in any form, but it must contain all data and information necessary to evaluate its merits.
  - (b) Review and Response to Petitions.
- (1) Upon receipt, the Division shall review a petition for an alternative to or an exemption from any provision of this Article 5 to ensure that it contains all necessary information to support the petition.
- (2) If the Division Chief determines that the proposed alternatives to or exemptions from the requirements of Article 5 will ensure an equivalent or greater level of protection of the public health and safety and the environment, he or she shall notify the petitioner that the petition is complete and proceed under the provisions of subsection (c)(3) of this section for approval of the petition.
- (3) If the Division Chief determines that the proposed alternatives to or exemptions from the requirements of Article 5 will not ensure an equivalent or greater level of protection of the public health and safety and the environment, he or she shall notify the petitioner, in writing, giving specific reasons for such determination.
- (4) In all cases, whether a petition is approved or not, the Division Chief shall respond in writing to the petitioner within 30 working days of receipt of a completed petition.
- (5) A petitioner who is in receipt of written notification from the Division Chief under subsection (b)(3) of this section shall not be precluded from resubmitting petition for alternatives to or exemptions from similar provisions of this Article 5.
  - (c) Approval of Alternative Requirements or Exemptions.
- (1) Any person subject to these regulations may depart from the requirements of Article 5 if the Division Chief finds that the person subject to these regulations can and will comply with alternative measures which will ensure an equivalent or greater level of protection of the public health and safety and the environment were the person to comply with the provisions of Article 5.
- (2) Any person subject to these regulations may be exempt from one or more of the requirements of Article 5 if the Division Chief finds that compliance with a requirement or requirements cannot be achieved at that terminal because of unusual circumstances or conditions at that terminal because of unusual circumstances or conditions at that terminal or because materials or personnel needed for compliance are unavailable.
- (3) If the Division Chief approves an alternative requirement or an exemption under this section, a letter of approval shall be issued to the petitioner setting forth the findings upon which the approval is based, and a copy of that letter shall be maintained at all times at the terminal with the terminal's operations manual required under Section 2385.
- (4)(A) The Division Chief may withdraw the letter of approval of an alternative requirement at any time if he or she finds that the person or persons subject to these regulations have not regularly and consistently complied with the approved alternative requirement.
- (B) The Division Chief may withdraw the letter of approval of an exemption at any time if he or she determines that compliance with the requirement or requirements of Article 5 can be achieved.

(C) Withdrawal of a letter of approval under this section shall be effective upon the receipt by the petitioner of written notification of the withdrawal

NOTE: Authority cited: Sections 8751, 8755, 8756 and 8758, Public Resources Code. Reference: Sections 8750, 8751, 8755, 8756 and 8758, Public Resources Code; and Sections 15375, 15376 and 15378, Government Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Amendment of section and NOTE filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

#### § 2315. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

- (a) "Administrator" means the administrator for oil spill response, as referenced in Public Resources Code Section 8750, subsection (a).
- (b) "Apparent violation" means an act, course of action or omission which, in the opinion of an agent or employee of the Division authorized to make such a determination, appears to be in violation of one or more of the provisions of Article 5.
- (c) "Barge" means any vessel that carries oil in commercial quantities as cargo, but is not equipped with a means of self-propulsion.
- (d) "Bunkers" or "bunker fuel" means fuel oil or lubrication oil supplied to any vessel for operating its propulsion and auxiliary machinery.
- (e) "CFR" means the currently effective edition of the United States Code of Federal Regulations.
  - (f) "Commission" means the California State Lands Commission.
- (g) "Division" means the Marine Facilities Division of the California State Lands Commission.
- (h) "Division Chief" means the Chief of the Marine Facilities Division or any employee of the Division authorized by the Chief to act on his behalf.
- (i) "HOSE TECHNICAL INFORMATION BULLETIN: No. IP-11-4" means the 1995 edition of the "Hose Technical Information Bulletin: No. IP-11-4; Oil Suction and Discharge Hose; Manual for Maintenance, Testing and Inspection", published by the Rubber Manufacturers Association (RMA), 1400 K Street, N.W., Washington, D.C. 20005.
- (j) "Hot work" means work involving sources of ignition or temperatures sufficiently high to cause the ignition of a flammable gas mixture. This includes any work requiring the use of welding, burning or soldering equipment; blow torches; permitted power driven tools; portable electrical equipment which is not intrinsically safe or contained within an approved explosion proof housing; sand blasting equipment; or internal combustion engines.
- (k) "ISGOTT" means the Fourth Edition of the International Safety Guide for Oil Tankers and Terminals, published in 1996 by the International Chamber of Shipping (ICS), 30/32 St. Mary Axe, London EC3A 8ET, England.
- (*l*) "International Safety Management (ISM) Code" or "ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization (IMO) by resolution A.741(18), as an amendment to the Annex to the International Convention for the Safety of Life at Sea, 1974 (SOLAS), (new Chapter IX) at the IMO's May 1994 SOLAS Conference.
- (m) "Marine terminal" means a facility, including a mobile transfer unit, other than a vessel, located on or adjacent to marine waters in California, used for transferring oil to or from tank vessels or barges. The term references all parts of the facility including, but not limited to, structures, equipment and appurtenances thereto used or capable of being used to transfer oil to or from tank vessels or barges. For the purpose of these regulations, a marine terminal includes all piping not integrally connected to a tank facility. A tank facility means any one or combination of above ground storage tanks, including any piping which is integral to the tank, which contains crude oil or its fractions and which is used by a single business entity at a single location or site. A pipe is integrally related to

an above ground storage tank if the pipe is connected to the tank and meets any of the following:

- (1) The pipe is within the dike or containment area;
- (2) The pipe is connected to the first flange or valve after the piping exits the containment area; or
- (3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.
- (n) "MARPOL 73/78" means the final act of the International Conference on Marine Pollution, 1973, including the International Convention for the Prevention of Pollution from Ships, 1973 and of the Protocol of 1978, published in *MARPOL 73/78*, Consolidated Edition, 1991, IMO Publications, International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England.
- (o) "Mobile transfer unit" means a marine fueling facility that is a vehicle, truck, trailer, tank car, or land based transportable tank, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.
- (p) "Offshore marine terminal" means any marine terminal at which tank vessels or barges are made fast to a buoy or buoys.
- (q) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.
- (r) "Onshore marine terminal" means any marine terminal at which tank vessels or barges are made fast to land structures or substantially land structures.
- (s) "Operator" when used in connection with vessels, marine terminals, pipelines, or facilities, means any person or entity which owns, has an ownership interest in, charters, leases, rents, operates, participates in the operation of or uses that vessel, terminal, pipeline, or facility. "Operator" does not include any entity which owns the land underlying the terminal or the terminal itself, where the entity is not involved in the operations of the terminal.
- (t) "Spill" or "discharge" means any release of oil into marine waters which is not authorized by any federal, state, or local government entity.
- (u) "Tank vessel" or "tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.
  - (v) "Terminal" means marine terminal.
- (w) "Terminal person in charge" or "TPIC" means an individual designated by the terminal operator as the person in charge of a particular oil transfer operation at a particular terminal.
- (x) "Threatened violation" means any threatened act, course of action or omission which, if carried out, in the opinion of an agent or employee of the Division authorized to make such a determination, would appear to be in violation of one or more of the provisions of Article 5.
- (y) "Transfer" means any movement of oil, including movements of bunker fuel, between the terminal and the vessel by means of pumping, gravitation or displacement. The term "transfer" also includes those movements of oil to, from or within any part of the terminal or vessel that are directly associated with the movement of oil or bunker fuel between the terminal and the vessel.
- (z) "Transfer area" means that part of a terminal through which oil product moves between a vessel and the first manifold or shut-off valve outside the terminal area as described in the terminal operations manual.
  - (aa) "Transfer operations" means the following:
- (1) For all terminals, all activities carried out with regard to a transfer, including, but not limited to:
  - (A) Preparation for transfer;
- (B) Hookup and disconnect of hoses, mechanical loading arms and any other equipment used for transferring oil; and
  - (C) Steady pumping.
  - (2) For offshore terminals:
  - (A) All activities set forth in subsection (aa)(1) of this section; and

- (B) The procedures and maneuvers for mooring and unmooring of the tank vessel or barge to and from the buoy or buoys as described in the terminal operations manual.
- (bb) "Vessel" means every description of watercraft or other artificial contrivance, used or capable of being used, as a means of transportation on water and includes, but is not limited to, tank vessels and barges.
- (cc) "Vessel person in charge" or "VPIC" means the person in charge of the vessel's oil transfer operations.

NOTE: Authority cited: Sections 8750, 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8755 and 8756, Public Resources Code. HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Editorial correction inserting inadvertently omitted first paragraph (Register 93, No. 10).
- 3. Amendment filed 3-9-99; operative 4-8-99 (Register 99, No. 11).

#### § 2320. Inspections and Monitoring.

- (a) The Division shall carry out an inspection program which shall include the following:
- (1) At least once a year, the Division shall cause to be carried out an inspection of each marine terminal in the state to determine whether all parts of the terminal are being maintained and operated in such a manner to ensure the public health and safety and the protection of the environment and in accordance with the operations manual required, and approved under Section 2385 of these regulations and 33 CFR Part 154.
- (2) On a continuing basis in accordance with Chapter 31F of Divisions 1 through 11, Title 24, Part 2, Volume 1 of the California Code of Regulations, the Division shall carry out or cause to be carried out inspections and investigations of each onshore marine terminal in the state to determine whether the structural integrity of the terminal, the oil transfer operations system and the safety equipment are designed and being maintained in a safe working condition.
- (3) On a continuing basis, the Division shall monitor transfer operations at all terminals.
- (b) Every agent or employee of the Division shall, prior to the inspection of a marine terminal or monitoring of an oil transfer operation, or at the time the agent or employee arrives at the terminal or vessel to carry out inspection or monitoring activities, make every reasonable attempt to notify the TPIC or VPIC, as appropriate, of the intended activity.
- (c)(1) Every terminal operator shall provide to the Division access at any time to any and all parts of the operator's terminal.
- (2)(A) Every terminal operator shall provide to the Division access at any time to any and all documents, records, policies, guidelines and reports relating to terminal personnel training, testing, inspections, maintenance and operation of the terminal, including but not limited to, the following:
  - 1. A copy of the terminal operator's letter of intent;
- 2. A copy of the state approved terminal operations manual with its letter of adequacy;
- 3. The name of each person currently designated as a TPIC at that terminal:
- 4. The date and result of the most recent test or examination of each item tested or examined as required by 33 CFR 156.170;
- 5. The hose information required by Section 2380, subsections (a)(1)(E), (F) and (G), including that marked on the hose;
- 6. The record of all inspections and examinations of the terminal by the U.S. Coast Guard and the Division within the last 3 years;
- 7. The record of all safety related inspections and examinations of the terminal by the State Fire Marshal local fire department or any port police within the last 3 years;
- 8. Any current permits to perform work of a hazardous nature issued pursuant to Section 2360; and
  - 9. The Declaration of Inspection required by Section 2335.
- (B) If policies, guidelines and reports described in subsection (A) of this section for a particular terminal are not available at the terminal except in an office or other location which is open and reasonably accessi-

ble only during reasonable business hours, the terminal operator shall not be required to provide the Division access to those policies, guidelines and reports except during reasonable business hours.

- (C) No terminal operator shall be required to provide access to policies, guidelines and reports except during reasonable business hours, during transfer operations or during investigations resulting from emergency situations, including, but not limited to, oil discharge events or situations where an oil discharge involving the terminal may be imminent.
- (3) Each operator of any vessel shall provide to the Division access on board the vessel at any and all times the vessel is engaged in oil transfer operations at any terminal. Access shall be provided to any and all parts of the vessel necessary, as deemed by the employee or agent of the Division, to monitor any and all phases, aspects and parts of transfer operations for compliance with regulations of the State of California.
- (4) Access under subsections (c)(1), (2) and (3) of this section shall be provided without warrant or prior notification by the Division.
- (5)(A) If any duly authorized employee or agent of the Division is denied access, as specified in this section, to any part of the terminal or to any vessels at the terminal, the employee or agent shall immediately make every reasonable attempt to notify the TPIC or VPIC, whichever is appropriate, that access has been denied.
- (B) No terminal may be used in transfer operations with any vessel during any period where any duly authorized employee or agent of the Division is denied access to that vessel.
- (6) If any duly authorized employee or agent of the Division is denied access as specified under this section, the Division shall do all of the following:
- (A) Provide notification of the denial of access to the Coast Guard Marine Safety Office having jurisdiction;
- (B) Provide notification of the denial of access to the Administrator; and
- (C) Take whatever legal action is necessary or appropriate to obtain access.
- (d) In the event of an oil spill, the presence of any employee or agent of the Commission shall in no way relieve or alter any responsibility any operator of a terminal or vessel may have to report the discharge to the Office of Emergency Services, as required under Government Code Section 8670.25.5, and to comply with all applicable contingency plans and all requirements under the Government Code regarding response to oil spills.

NOTE: Authority cited: Sections 8751, 8755 and 8757, Public Resources Code. Reference: Sections 8670.1 through 8670.70, Government Code; and Sections 8750, 8751, 8755 and 8756, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- Amendment of subsections (c)(2)(A) and (c)(2)(A)8. filed 3-9-99; operative 4-8-99 (Register 99, No. 11).
- Amendment of subsection (a)(2) filed 2–21–2006; operative 3–23–2006 (Register 2006, No. 8).

#### § 2325. Notification.

- (a) Unless the Division and a terminal operator agree otherwise, at least four (4) hours, but not more than twenty four (24) hours, prior to the initiation of any transfer operation, the operator of the terminal where the transfer is to take place shall provide notice of the transfer to the Division. For barge operations, where the terminal operator has less than four (4) hours advance notice of the transfer, the terminal operator shall provide the Division with notice of the transfer as soon as possible after receiving notice of the anticipated transfer, but in any case prior to the initiation of transfer operations.
- (b) Notifications shall be made in person, by telephone or by facsimile machine to the local area Division field office. For terminals located north of the boundary between Monterey and San Luis Obispo Counties, notifications are to be made to the Division field office in Hercules, (510) 741–4950; facsimile number (510) 741–4975. For terminals located

south of the boundary between Monterey and San Luis Obispo Counties, notifications are to be made to the Division field office in Long Beach, (562) 499–6348; facsimile number (562) 499–6355.

- (c) The notification shall include the following:
- (1) The location of the transfer;
- (2) The expected time of arrival of the vessel;
- (3) Time anticipated for initiation of the transfer operations;
- (4) The name of the tank vessel or barge involved,; and
- (5) The type or types of oil, oil products, or mixtures containing oil expected to be transferred, including, but not limited to, cargo, bunker fuel, slops and dirty ballast.
- (6) The approximate quantity of material being transferred under the categories of feedstock, product or slops.
- (d) The terminal operator or TPIC shall promptly notify the local area Division field office of any report or notification received from the VPIC, that the tank vessel berthed at the terminal for the purpose of conducting a transfer operation does not have the ability to move away from the berth, under its own power, within 30 minutes, as described in Section 2340, subsection (c)(28)(A).
- (e) The terminal operator or TPIC shall promptly notify the local area Division field office of any damage to structure or equipment at the terminal that is likely to impact public health and safety and the environment adversely, or is damage in excess of \$50,000 in value. Examples of incidents which may cause reportable damage shall include, but not be limited to, impact from vessel, heavy weather, fire, explosion, equipment failure, acts of terrorism or seismic activity.

NOTE: Authority cited: Sections 8751, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- Change without regulatory effect amending subsection (b) filed 8–16–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 33)
- Amendment of subsection (d) and new subsection (e) filed 10-5-94; operative 11-4-94 (Register 94, No. 40).
- Amendment of subsections (b) and (c)(5), new subsection (c)(6) and amendment of subsection (e) filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

#### § 2330. Exchange of Information.

- (a) Exchange of Information Prior to a Vessel's Arrival at a Terminal.
- (1) Prior to arrival of a tank vessel or barge at the terminal, the terminal operator shall acquire from the tank vessel or barge or its owners, operators or agents, and the vessel's owner, operator or agent shall provide, all of the following items of information which are applicable:
  - (A) Draft on arrival:
  - (B) Maximum draft and trim expected during transfer operation;
  - (C) Whether tank cleaning or crude oil washing will be undertaken;
  - (D) Any repairs that could delay commencement of cargo transfer;
  - (E) Manifold details, including type and size;
- (F) Quantity and nature of slops, dirty ballast to be transferred at the terminal and any contamination thereof by chemical additives;
- (G) Any defect of hull, machinery, piping, valves or other equipment which may:
  - 1. Affect the safe maneuverability of the tank vessel or barge; or
- Constitute a hazard to public health and safety and the environment;
- (H) Any other information pertinent to mooring, transfer of vessel's stores and cargo transfer operations.
- (2) Prior to arrival at the terminal, the terminal operator shall provide, as applicable to the operator of the tank vessel or barge, information which shall include but not be limited to:
- (A) Least depth of water expected at the berth while the vessel will be at the berth;
- (B) The minimum number, length, size and material of mooring lines and emergency towing wires and accessories which the vessel should have available for mooring operations;

- (C) Manifold, hose and mechanical loading arm details, including, but not limited to, type and size, used for oil transfer;
  - (D) Details and requirements concerning any vapor control system;
- (E) Terminal requirements for crude oil washing and tank cleaning procedures;
  - (F) Any arrangements for the reception of slop or oil ballast residues;
- (G) Any particular features of a dock or mooring or any significant damage which is considered essential to bring to the notice of the Master of the tank vessel, crew of the barge, Pilot or Mooring Master;
- (H) At offshore terminals, the number of tugs required and the number of mooring support vessels that will be provided for mooring and unmooring operations;
- (I) At offshore terminals information on wind, sea, swell, current, tide, visibility and load limitations and terminal restrictions including conditions under which mooring will not be permitted and conditions requiring cessation of transfer operations and departure from the moorings; and
- (J) Any other information pertinent to available port services, mooring and cargo transfer operations.
  - (b) Exchange of Information upon Arrival (Pre-transfer Conference).
- (1) Transfer operations shall not commence until both persons in charge are present and mutually agree to commence transfer operations after having conducted a pre-transfer conference and completed the declaration of inspection.
- (2) The TPIC and VPIC shall hold a pre-transfer conference, to ensure that each person in charge clearly understands all information and agrees to all procedures necessary for a safe and pollution-free transfer operation.
- (3) Those matters to be addressed in the pre-transfer conference shall include, but not be limited to, detailed information concerning the following:
  - (A) The quantities and temperatures of the products to be transferred;
- (B) The cargo information listed in Section 2385, subsection (d)(2)(E) for the products to be transferred;
- (C) The transferring and receiving systems, including, but not limited to, the following:
  - 1. The sequence of transfer operations;
  - 2. Maximum allowable working pressure;
  - 3. Maximum allowable product temperature;
  - 4. The control of line pressures;
  - 5. The location of pressure gauges;
  - 6. Settings of relief valves and the direction of their discharge;
- Communications between vessel and terminal to compare and confirm quantities transferred and received;
- 8. Limitations on the movement of loading hoses and mechanical loading arms;
  - 9. The initial, maximum and topping off transfer rates;
  - 10. Tank changeover procedures;
  - 11. Topping off procedures;
  - 12. Transfer shutdown procedures; and
- 13. Signals to be used for standby, slowdown transfer rate, stop transfer, and emergency shutdown in case of a breakdown of communications systems;
- 14. If any part of the transfer is to be by gravity, the maximum marine terminal transfer rate possible using gravity; and
- 15. If the transfer is expected to take less than an hour, the approximate anticipated length of time needed for the transfer.
  - (D) Critical stages of the transfer operation;
  - (E) Federal, state, and local rules that apply to the transfer of oil;
  - (F) Emergency procedures;
  - (G) Discharge containment procedures;
  - (H) Discharge reporting procedures and requirements;
  - (I) Watch or shift arrangement;
- (J) Frequency and means of checking that communications systems are operating effectively; and
  - (K) Minimum underkeel clearance required by the terminal operator.

- (4) In addition to the requirements of subsection (b)(3) of this section, the TPIC and VPIC shall verify the following during the pre-transfer conference:
- (A) The name or title and location of each person participating in the transfer operation:
- (B) That vessel's cargo tanks which are required by the Coast Guard to be inerted have an oxygen content in the vapor space of cargo tanks of 8 percent by volume or less;
- (C) That inerted tanks will remain inerted throughout the transfer operation or, if not, that Coast Guard approved alternate safety procedures will be employed;
- (D) Whether tank cleaning or crude oil washing will be conducted during the transfer operation;
- (E) The number and sizes of hose connections or loading arms to be used;
- (F) Arrangements for the transfer of slops and oily ballast residues; and
- (G) The maximum transfer rate of vapor control systems used during the transfer operation.

NOTE: Authority cited: Sections 8750, 8751, 8752, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Amendment of subsections (a)(1)(H), (a)(2)(G), (b)(2), designation and amendment of subsection (b)(3) and subsection redesignation, amendment of subsection (b)(3)(C)12–13, new subsections (b)(3)(C)14–15 and amendment of subsection (b)(4) filed 10–5–94; operative 11–4–94 (Register 94, No. 40).
- 3. Amendment of subsections (a)(2)(C)-(D), (b)(3)(C)13. and (b)(3)(I)-(J), new subsection (b)(3)(K) and amendment of subsections (b)(4)(F)-(G) filed 3-9-99; operative 4-8-99 (Register 99, No. 11).

#### § 2335. Declaration of Inspection.

- (a) No person may transfer oil to or from a vessel unless both the TPIC and VPIC have filled out and signed a declaration of inspection described in subsection (c) of this section.
- (b) No person in charge may sign the declaration of inspection unless he or she has determined by visual inspection, unless visual inspection is precluded, and indicated by initialling in the appropriate space on the declaration of inspection form, that the terminal, vessel, or both, as appropriate, meets the requirements of Section 2340.
- (c) The declaration of inspection may be in any form, but must contain at least the following:
- (1) The name or other identification of the transferring vessel and the terminal:
  - (2) The address of the terminal;
- (3) A list of the requirements in Section 2340, subsection (c), with each requirement set forth separately and with spaces on the form following each requirement for the person in charge of the vessel, terminal, or both, as appropriate, to indicate by initialling that the requirement is met for the transfer operation; and
- (4) A space for the date, time of signing, signature, and title of each person in charge during transfer operations on the transferring vessel or terminal and space for the date, time of signing, signature, and title of each person in charge during transfer operations on the receiving terminal or vessel.
- (d) On completion of the transfer operation the TPIC and VPIC shall annotate the declaration of inspection with:
  - (1) The date and time of hookup for the transfer operation; and
- (2) The date and time of disconnection upon completion of the cargo transfer;
- (e) The VPIC and TPIC shall each have a signed copy of the declaration of inspection available for inspection by any employee or agent of the Division during the transfer operation.
- (f) Each TPIC and VPIC who is different from the person who originally signed the declaration of inspection shall sign the declaration of inspection before assuming or re-assuming the duties of a person in charge. Prior to their signing or re-signing the declaration of inspection, each per-

son in charge shall inspect the terminal or vessel, as appropriate, to ensure that the requirements of Section 2340, are being maintained.

(g) The terminal operator shall retain a signed copy of the declaration of inspection for at least three (3) years from the date of signature. NOTE: Authority cited: Sections 8750, 8751, 8752, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Amendment of subsection (c)(3) filed 10–5–94; operative 11–4–94 (Register 94, No. 40).
- 3. Amendment of subsections (b) and (c)(3) filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

#### § 2340. Requirements for all Transfer Operations.

- (a) No operator, crew member or personnel of a vessel or terminal shall carry out or perform any willful or negligent act or omission which causes the entry of any amount of oil into marine waters during any transfer operation.
- (b)(1) Unless, because of emergencies or unanticipated circumstances, doing so would harm public health or safety or the environment, all transfer operations shall be conducted in accordance with the terminal operations manual approved under § 2385 of these regulations or vessel transfer procedures required by 33 CFR 155.720, as appropriate, and with the mutual agreements and understanding established during the pre–transfer conference.
- (2) Notwithstanding the provisions of subsection (b)(1) of this section, in circumstances where for operational or safety reasons the sequence of transfer operations or any other conditions or procedures agreed to in the pre-transfer conference are to be changed, the TPIC and VPIC shall, prior to continuation of the transfer operation, confer with each other to ensure that each person in charge clearly understands all information regarding the changes and agrees to all procedures necessary for continuation of a safe and pollution free transfer operation.
- (c) The respective requirements with which the terminal and vessel must comply and which must be set forth on the declaration of inspection and initialled separately by both the TPIC and VPIC or both, as appropriate, as required by Section 2335, shall include, but not be limited to, the following:
- (1) The vessel's moorings are strong enough to hold during all expected conditions of surge, current, and weather that are long enough to allow adjustment for changes in draft, drift, and tide during the transfer operation.
- (2) Transfer hoses and loading arms are long enough to allow movement of the vessel while secured at the berth without placing strain on the hose, loading arm, or transfer piping system.
- (3) To prevent kinking or other damage to the hose and strain on its coupling, each hose is supported in accordance with the operational recommendations of the "HOSE TECHNICAL INFORMATION BULLE-TIN: No. IP-11-4."
  - (4) Each party of the transfer system is aligned to allow the flow of oil.
- (5) Each part of the transfer system not necessary for the transfer operation is securely blanked off. Each test cock, sampling or bleeder valve is closed and securely capped.
- (6) The end of each hose, loading arm and manifold that is not connected for the transfer of oil is blanked off with a bolt in at least every other hole and in no case less than four (4) bolts.
- (7) The transfer system is attached to a fixed connection on the vessel and the terminal.
- (8) Except when used to receive ballast as agreed within the pre-transfer conference, each overboard discharge or sea suction valve that is connected to the vessel's transfer or cargo tank system is sealed or lashed in the closed position.
- (9) Each transfer hose has no unrepaired loose covers, kinks, bulges, soft spots, or other defect which would permit the discharge of oil through the hose material and no gouges, cuts, or slashes that penetrate

- any layer of hose reinforcement. "Reinforcement" means the strength members of the hose, consisting of fabric, cord or metal.
- (10) Each hose or loading arm in use meets the requirements of Section 2380, subsections (a) and (b), respectively.
- (11) Each connection meets the requirements of Section 2380, subsection (d).
- (12) Any monitoring devices used to detect or limit the size of a discharge of oil, if installed, are operating properly.
- (13) The small discharge containment equipment for the terminal, required by Section 2380, subsection (f), is readily accessible or deployed as applicable and will be periodically drained as required by subsection (g) of Section 2380.
- (14) The discharge containment equipment for the vessel is in place and will be periodically drained to provide the required capacity.
  - (15) Each drain and scupper is securely closed by mechanical means.
- (16) All connections in the transfer system are leak free, except that a component in the transfer system, such as the packing glands of a pump which cannot be made leak free, shall not leak at a rate that exceeds the capacity of the discharge containment provided during the transfer operation.
- (17) The communications required by Section 2370 are operable for the transfer operation.
- (18) The emergency means of shutdown for the terminal, required by Section 2380, subsection (h) and the emergency means of shutdown for the vessel required by 33 CFR 155.780 are in position and operable.
  - (19) There is a TPIC and a VPIC, and each:
- (A) Meets the appropriate requirements of Section 2375 for persons in charge;
- (B) Is at the site of the transfer operation and immediately available to the transfer personnel;
- (C) Has ready access to a copy of the terminal operations manual or vessel transfer procedures, as appropriate; and
- (D) Conducts the transfer operation in accordance with the terminal operations manual or vessel transfer procedures, as appropriate.
- (20) The personnel required, under the terminal operations manual and the vessel transfer procedures, to conduct the transfer operation:
  - (A) Are on duty; and
- (B) Conduct the transfer operation in accordance with the terminal operations manual or vessel transfer procedures, as appropriate.
- (21) At least one person is at the site of the transfer operation who fluently speaks the language or languages spoken by both persons in charge.
- (22) The TPIC and VPIC of transfer operations have held a pre-transfer conference as required by Section 2330, subsection (b).
- (23) The TPIC and VPIC of transfer operations agree when the transfer operation is to begin.
- (24) If any part of the transfer operation may take place between sunset and sunrise or during periods of reduced visibility, the lighting required by Section 2365 will be provided.
- (25) A transfer operation which includes collection of vapor emitted from a vessel's cargo tanks through a vapor control system not located on the vessel must have the following verified by the TPIC:
- (A) Each manual valve in the vapor collection system is correctly positioned to allow the collection of cargo vapor.
- (B) A vapor collection hose or arm is connected to the vessel's vapor connection.
- (C) The electrical insulating device required under subsections (b) and (c) of Section 2341, is fitted between the terminal vapor connection and the vessel vapor connection.
- (D) The initial loading rate and the maximum transfer rate are confirmed by the TPIC and VPIC.
- (E) The maximum and minimum operating pressures at the terminal vapor connection are confirmed by the TPIC and VPIC.
- (F) The barge overfill control system, if compatible with the connection to the terminal, is connected to the terminal, is tested, and is operational.

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- (G) The following have been performed not more than 24 hours prior to the start of the transfer operation:
- 1. Each alarm and automatic shutdown system has been tested and found to be operating properly; and
- 2. Hydrocarbon gas and oxygen analyzers have been checked for calibration by use of a span gas.
- (H) Each vapor control hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapor through the hose material, and no external gouges, cuts, or slashes that penetrate any layer of hose reinforcement.
- (I) The oxygen content of the tank vessel's cargo tanks, if inerted, is at or below 8 percent by volume.
  - (26) Fire fighting equipment required in Section 2345 is in readiness.
- (27) Where required, the spill containment provisions of sections 2395 and 2396 are being complied with.
  - (28) The tank vessel has either of the following capabilities:
- (A) The tank vessel's boilers, main engines, steering machinery and other equipment essential for maneuvering are maintained in a condition so that the tank vessel has the capability to move away from the berth within 30 minutes under its own power; or
- (B) Where the tank vessel does not have the capability specified in Section 2340, subsection (c)(28)(A), appropriate tug assistance is available so that the tank vessel can be moved away from the berth within 30 minutes.
- (29) Operations and practices are carried out in compliance with the following recommendations in ISGOTT:
- (A) Emergency towing wires are rigged forward and aft and the ends maintained not greater than 5 feet above the water (chapter 3).
- (B) Precautions regarding openings in superstructures are being observed (chapter 6).
- (C) Precautions regarding flame screens are being observed (chapter 6).
- (D) Precautions regarding unauthorized craft alongside a tank vessel or barge are being observed (chapter 6).
- (E) Precautions regarding entry to pumprooms, pumproom ventilation and bilges, are being observed (chapter 2).
- (30) The requirements of § 2341 to prevent electrical arcing at onshore terminals are being complied with.
- (31) The tank vessel is in compliance with the ISM Code and has on board a Document of Compliance and a Safety Management Certificate. A tank vessel of a country not party to Chapter IX of SOLAS has on board current valid documentation showing that the vessel's company has a safety management system which has been audited and assessed consistent with the ISM Code.

The requirement to be certified under the ISM Code does not apply to barges.

- (d) No person shall conduct an oil transfer operation unless the TPIC and VPIC have:
- (1) Conducted the pre-transfer conference required under Section 2330, subsection (b);
- (2) Ensured that transfer connections have been made as specified in Section 2380, subsection (d);
- (3) Ensured that discharge containment equipment on the terminal and on or around the tank vessel or barge required under Sections 2380 and 2395 are in position or on stand-by, as appropriate; and
- (4) Filled out and signed the Declaration of Inspection as required by Section 2335, subsection (a).
- (e) No TPIC shall conduct a transfer operation with a tank vessel unless the tank vessel has either one of the capabilities of moving away from the berth within 30 minutes, as specified in Section 2340, subsection (c)(28).
- (f) During all transfer operations, the TPIC shall be in attendance at the terminal.
- (g) Each TPIC shall ensure that the means of operating the emergency shutdown is continually manned so that it can be activated in 30 seconds

- or less, as required in Section 2380, subsection (h)(5), while oil is being transferred between the terminal and the vessel.
- (h) Each person conducting an oil transfer shall stop the transfer operation whenever oil from any source is discharged into the water or upon the adjoining shoreline. The transfer operation shall not resume unless authorized by the U.S. Coast Guard and the operator has complied with, or is complying with, the contingency plan approved by the Administrator for the terminal where the transfer is taking place.
- (i)(1) Each person conducting a transfer operation shall stop the transfer operation whenever oil from any source is leaked onto the transfer operation work area, but not in the water, and shall not resume the transfer operation until after both of the following are completed:
- (A) The oil leaked into the oil transfer work area has been cleaned up; and
- (B) All necessary preventive measures have been taken to ensure that a similar leak of oil does not recur.
- (2) Transfer operations need not be stopped under subsection (i) of this section if all of the following occur:
- (A) The leak is directly into the small discharge containment of the terminal or the discharge containment aboard the vessel;
- (B) No oil is displaced outside of the small discharge containment of the terminal or the discharge containment of the vessel; and
  - (C) Immediate corrective action is taken to stop the leakage of oil.
- (j) Notwithstanding the provisions of subsections (h) and (i) of this section, the transfer operation may resume or may continue without interruption if both of the following occur:
- (1) Continuation or resumption of the transfer operation is necessary to avoid further discharge of oil; and
- (2) Both the TPIC and VPIC agree that continuation or resumption is necessary to avoid further discharge of oil.
- (k) The provisions of subsections (h), (i) and (j) of this section are subject to any direction by the Administrator issued directly in response to the discharge into the water.

NOTE: Authority cited: Sections 8750, 8751, 8752, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. New subsections (a)–(b)(2), subsection redesignation, amendment of subsections (c)(19)(C) and (c)(27), new subsection (c)(30), repealer of subsection (f) and amendment of subsections (i)(2), (j) and (k) filed 10–5–94; operative 11–4–94 (Register 94, No. 40).
- 3. Amendment of subsections (c)(3), (c)(9), (c)(13), (c)(25), (c)(25)(C), (c)(25)(H) and (c)(30) and new subsection (c)(31) filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

### § 2341. Requirements to Prevent Electrical Arcing at Onshore Terminals.

(a) Insulating Flange Joint.

For the purpose of this section, an "insulating flange joint" means a typical insulating flange joint as described in Appendix D of ISGOTT or any other insulating flange that meets the electrical resistance requirements of subsection (e) of this section.

(b) Insulating Flange Joints on Metallic Cargo or Vapor Control Arms. Each metallic cargo or vapor control arm used during a transfer operation shall be fitted with an insulating flange joint to ensure electrical discontinuity between the terminal and vessel. All metal on the vessel's side of the insulating flange joint shall be electrically continuous to the vessel and that on the terminal's side shall be electrically continuous to the terminal's grounding system.

(c) Cargo and Vapor Control Hose Connections.

Each cargo hose string or vapor control hose used during a transfer operation shall have either an insulating flange joint or a single length of non-conducting hose to ensure electrical discontinuity between the terminal and vessel. All metal on the vessel's side of the non-conducting length of hose shall be electrically continuous to the vessel and that on the terminal's side shall be electrically continuous to the terminal's grounding system.

- (d) Testing of Insulating Flange Joints.
- (1) The terminal operator shall test or cause to be tested each insulating flange joint by measuring the electrical resistance between the metal pipe on the terminal side of the flange joint and the end of the hose or metal arm when freely suspended. Such tests shall be conducted at intervals not exceeding three months.
- (2) At terminals which conduct infrequent transfers of oil and the interval between transfers exceeds three months, the test specified in subsection (d)(1) of this section need not be conducted at intervals not exceeding three months. However, such test shall be conducted no more than 7 days prior to the connection of any metallic loading or vapor recovery arm or hose string for the purpose of transferring oil.
- (3) The terminal operator shall maintain records of test dates, measured electrical resistance and name and designation of person conducting the test at the terminal for a period of at least one year from the date of testing.
  - (e) Insulating Flange Joints: Minimum Resistance.

No insulating flange joint whose measured electrical resistance is less than 1000 ohms shall be used in any metallic cargo or vapor recovery arm or hose string connection between the terminal and a vessel.

(f) Vessel-to-shore Electrical Bonding Cables.

No vessel-to-shore electrical bonding cables or wires shall be used for a transfer operation.

NOTE: Authority cited: Sections 8750, 8751, 8752, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### HISTORY

- 1. New section filed 10-5-94; operative 11-4-94 (Register 94, No. 40).
- Repealer of subsection (a), subsection relettering, and amendment of newly designated subsections (a)–(c), (d)(2) and (f) filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

#### § 2345. Fire Prevention for Transfer Operations.

- (a) Immediately before or on arrival at a terminal at which it is intended to conduct an oil transfer operation, fire hoses shall be connected to the tank vessel's fire main, one forward and one aft of the tank vessel's manifold. Where monitors are provided, they shall be pointed towards the manifold and be ready for immediate use.
- (b) At least two type B-II portable fire extinguishers shall be placed near the manifold, one forward and one aft of the manifold.
- (c) When oil is being transferred, pressure shall be maintained on the tank vessel's fire main from the tank vessel's fire pump. Where this is impracticable, the tank vessel's fire pump shall be in a standby condition and ready for immediate use. Fire mains shall be pressurized or be capable of being pressurized within 2 minutes.
- (d) The vessel's fire extinguishing equipment shall be operational and ready for immediate use.
- (e) No packaged cargo or vessel's stores may be transferred between the terminal and the vessel during a transfer operation unless authorized by both the TPIC and VPIC. When authorizing transfers under this subsection, the TPIC and VPIC shall consider any potential risk of fire or explosion.
- (f) Blending of two or more oil products in any tank or tanks of a tank vessel or barge alongside a terminal by the introduction of pressurized air shall not be permitted.

NOTE: Authority cited: Sections 8750, 8751, 8752, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### HISTORY

- 1. New section filed 11–20–92; operative 12–21–92 (Register 92, No. 47). 2. New subsection (e) filed 10–5–94; operative 11–4–94 (Register 94, No. 40).
- 3. New subsection (f) filed 3-9-99; operative 4-8-99 (Register 99, No. 11).

#### § 2350. Unauthorized Visitors.

(a) Except for authorized agents or employees of federal, state or local governmental entities, anyone who does not have the TPIC's permission shall not be allowed access to the terminal.

(b) Except for authorized agents or employees of federal, state or local governmental entities, anyone who does not have the VPIC's permission shall not be allowed access to the vessel.

NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Sections 8750, 8751, 8752 and 8755, Public Resources Code.

#### HISTORY

1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).

#### § 2351. Marine Terminal Physical Security Program.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code. HISTORY

- 1. New section filed 3-7-2002 as an emergency; operative 3-7-2002 (Register 2002, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-2002 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 6-27-2002 as an emergency; operative 6-27-2002 (Register 2002, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-25-2002 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 10-24-2002 as an emergency; operative 10-24-2002 (Register 2002, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-21-2003 or emergency language will be repealed by operation of law on the following day
- 4. Repealed by operation of Government Code section 11346.1(g) (Register 2004, No. 33).

#### § 2355. Warning Signs.

(a) Vessel Warning Signs.

Any vessel berthed at a terminal for the purpose of conducting a transfer operation shall display warning signs and notices indicating emergency escape routes as recommended in chapter 4 of ISGOTT.

(b) Terminal Warning Signs.

The terminal operator shall ensure that:

- (1) Permanent notices and signs indicating that smoking and naked lights are prohibited are conspicuously displayed in the terminal and on the berth and similar permanent notices and signs are displayed at the entrance to the terminal area or shore approaches to the berth;
- (2) In buildings and other shore locations where smoking is allowed, appropriate notices are conspicuously displayed; and
- (3) Emergency escape routes from the tank vessel berth to a safe place on the shore are clearly indicated.

NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Sections 8750, 8751, 8752 and 8755, Public Resources Code.

#### HISTORY

1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).

#### § 2360. Precautions for Performing Hot Work.

(a) Hot Work on Terminal.

No construction, repair, maintenance, dismantling or modifications of facilities which include hotwork shall be carried out at a terminal without the written permission of the terminal operator. If a tank vessel or barge is moored at the terminal, the written agreement of the Master or the VPIC, as appropriate, shall also be obtained if the work is on the berth. The person or entity performing such work shall ensure that work does not commence until written permission is obtained.

- (b) Hot Work on Tank Vessel or Barge.
- (1) When any repair or maintenance is to be done on board a tank vessel or barge alongside a terminal, the Master or VPIC shall inform the terminal operator. Agreement shall be reached on the safety precautions to be taken, with due regard to the nature of the work.
- (2) Hot work on board a tank vessel or barge shall be prohibited unless all applicable regulations and safety requirements of the National Fire Protection Association's Standard for Fire Prevention in Use of Cutting and Welding Processes – NFPA 51B, 1994, NFPA, 1 Batterymarch Park, Quincy, MA 02269-9101 have been met.

NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Sections 8750, 8751, 8752 and 8755, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Amendment of section heading and section filed 3-9-99; operative 4-8-99 (Register 99, No. 11).

#### § 2365. Lighting.

- (a) Except as provided in subsection (c) of this section, for all transfer operations between sunset and sunrise and during times of reduced visibility, a terminal shall have fixed lighting that adequately illuminates the following:
  - (1) Each transfer connection point on the terminal;
- (2) Each transfer connection point in use on any barge moored at the terminal to or from which oil is being transferred;
  - (3) Each transfer operations work area on the terminal; and
- (4) Each transfer operations work area on any barge moored at the terminal to or from which oil is being transferred.

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- (b) Where the illumination appears to the Division to be inadequate, the Division may require verification by instrument of the levels of illumination. On a horizontal plane 3 feet above the barge deck or walking surface, illumination must measure at least:
  - (1) 5.0 foot candles at transfer connection points; and
  - (2) 1.0 foot candle in transfer operations work areas.
- (c) For small remote facilities, the Division may authorize operations with an adequate level of illumination provided by the vessel or by portable means.

NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Sections 8750, 8751, 8752 and 8755, Public Resources Code.

#### HISTORY

1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).

#### § 2370. Communications.

- (a) Each terminal shall have a means that enables continuous two-way voice communication between the TPIC and the VPIC.
- (b) The means required by subsection (a) of this section shall be usable and effective in all phases of the transfer operation and all conditions of weather at the terminal.
- (c) A terminal may use the voice communications system for emergency shutdown specified in Section 2380, subsection (h)(6)(B), to meet the requirement of subsection (a) of this section.
- (d) An alternate continuous two-way voice communication system shall be available in the event that the primary communications system is disabled.
- (e) Portable radio devices used in compliance with this section shall be intrinsically safe, as defined in the Institute of Electrical and Electronics Engineers Standard Dictionary, 1984 edition, published by the Institute of Electrical and Electronics Engineers, available from the American Society of Mechanical Engineers, 22 Law Drive, Box 2300, Fairfield, New Jersey, and meet Class I, Division I, Group D requirements as defined in the National Electric Code, Article 500, 1996 edition, published by NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.
- (f) The means of communication shall be continuously manned during a transfer operation by a person or persons who can immediately contact the TPIC and VPIC.
- (g) If the means of communications has not been used within a period of 60 minutes during a transfer operation, the means of communications shall be checked to ensure that it is operative.

NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### HISTORY

- $1.\ New\ section\ filed\ 11-20-92;\ operative\ 12-21-92\ (Register\ 92,\ No.\ 47).$
- 2. Amendment of subsection (e) filed 10–5–94; operative 11–4–94 (Register 94, No. 40).
- 3. Amendment of subsection (e) filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

#### § 2375. Requirements for Persons in Charge.

- (a) Terminal Person in Charge (TPIC).
- (1) The TPIC of oil transfer operations shall have successfully complied with all of the following:
- (A) A program of operations and supervisory personnel training as prescribed in 2 CCR § 2542(e);
- (B) A testing and evaluation procedure to qualify for certification as prescribed in 2 CCR § 2545(f);
  - (C) Recertification as prescribed in 2 CCR § 2545(g), as appropriate;
- (D) At least 48 hours of experience in oil transfer operations, including a minimum of 6 connections and transfers and 6 transfers and disconnects; and
- (E) Sufficient experience at the terminal for the terminal operator to determine that this experience is adequate for being in charge of oil transfer equipment and procedures.

- (2) The terminal operator shall ensure that each TPIC has valid documentation to authenticate that the requirements of subsections (a)(1)(A) through (E) of this section have been met.
- (3) The terminal operator shall designate in writing each person authorized to serve as a TPIC and advise the Division, in writing, of his or her designation.
- (4) Each TPIC shall carry evidence of their authorization to serve as a TPIC when they are engaged in transfer operations, unless such evidence is immediately available at the terminal.
  - (b) Vessel Person in Charge (VPIC).
- (1) For the purpose of this subsection, a "PIC" means Person in Charge.
- (2) The operator of a tank vessel or barge with a capacity of 250 or more barrels of oil, shall designate, in writing, a person in charge of each transfer operation.
- (3) The VPIC of oil transfer operations shall have sufficient training and experience with respect to the cargo to be transferred and the relevant characteristics of the vessel or barge on which he or she is engaged, including, but not limited to, the cargo system, cargo containment system, transfer procedures, shipboard emergency equipment and procedures, control and monitoring systems, procedures for reporting pollution incidents, and, if installed, Crude Oil Washing (COW), inert gas, and vapor control systems, to conduct a transfer of oil safely. The minimum qualifications necessary to be designated as VPIC are those set forth in this Article 5 and 33 CFR 155.710.
- (4) Each designated VPIC of a tank vessel documented under the laws of the United States shall:
- (A) Hold a license issued under 46 CFR Part 10 authorizing service aboard a vessel certified for voyages beyond any Boundary Line described in 46 CFR Part 7, except on tank vessels not certified for voyages beyond the Boundary Line; and
- (B) Hold a Tankerman–PIC endorsement issued under 46 CFR Part 13 that authorizes the holder to supervise the transfer of oil or liquid cargo in bulk.
- (5) Each designated VPIC of a tank barge required to be inspected under Title 46, of the United States Code, Section 3703, shall hold a Tankerman–PIC or Tankerman–PIC (Barge) endorsement issued under 46 CFR Part 13 that authorizes the holder to supervise the transfer of oil or liquid cargo in bulk.
  - (6) Each designated VPIC of a foreign tank vessel shall:
- (A) Hold a license or other document issued by the flag state or its authorized agent authorizing service as master, mate, pilot, engineer, or operator on that vessel;
- (B) Hold a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), or other form of evidence attesting that the VPIC meets the requirements of Chapter V of STCW as a PIC of the transfer of oil or liquid cargo in bulk;
- (C) Be capable of reading, speaking, and understanding in English, or a language mutually agreed upon with the TPIC, all instructions needed to commence, conduct, and complete a transfer of oil, or a liquid cargo in bulk, except that the use of an interpreter meets this requirement if the interpreter:
  - 1. Fluently speaks the language spoken by each PIC;
- 2. Is immediately available to the VPIC on the tank vessel at all times during the transfer; and
- 3. Is knowledgeable about, and conversant with terminology of tank vessels and transfers; and
- (D) Be capable of effectively communicating with all crew members involved in the transfer, with or without an interpreter.
  - (7) Each designated VPIC of foreign tank barge shall:
- (A) Hold a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to STCW, or other form of evidence attesting that the VPIC meets the requirements of Chapter V of STCW as a PIC of the transfer of oil;

- (B) Be capable of reading, speaking, and understanding in English, or a language mutually agreed upon with the TPIC of the transfer, all instructions needed to commence, conduct, and complete a transfer of oil or liquid cargo in bulk, except that the use of an interpreter meets this requirement if the interpreter:
  - 1. Fluently speaks the language spoken by each PIC;
- 2. Is immediately available to the VPIC on the tank barge at all times during the cargo transfer; and
- 3. Is knowledgeable about, and conversant with terminology of, tank vessels, barges and transfers; and
- (C) Be capable of effectively communicating with all crew members involved in the transfer, with or without an interpreter.
- NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Sections 8750, 8751, 8752 and 8755, Public Resources Code.
  - History
- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Amendment filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

### § 2376. Limitations on Hours of Work for Terminal Personnel.

- (a) For the purpose of this section, the term "work" includes any operational or administrative duties associated with a marine terminal.
- (b) Except in an emergency or a drill, no TPIC or terminal personnel engaged in transfer operations shall be permitted to work more than 16 hours in any 24 hour period, or more than 40 hours in any 72 hour period, or more than 72 hours in any period of seven consecutive days.

NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Sections 8750, 8751, 8752 and 8755, Public Resources Code.

#### HISTORY

1. New section filed 10-5-94; operative 11-4-94 (Register 94, No. 40).

### § 2380. Equipment Requirements: Testing and Inspections.

- (a) Hose Assemblies.
- (1) Each hose assembly used for transferring oil shall meet the following requirements:
- (A) The minimum design burst pressure for each hose assembly shall be:
  - 1. At least 600 pounds per square inch; and
- 2. At least four times the sum of the pressure of the relief valve setting (or four times the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system at the point where the hose is installed.
- (B) The maximum allowable working pressure (MAWP) for each hose assembly shall be more than the sum of the pressure of the relief valve setting (or the maximum pump pressure when no valve is installed) plus the static head pressure of the transfer system at the point where the hose is installed.
  - (C) Each nonmetallic hose shall be usable for oil service.
  - (D) Each hose assembly shall have one of the following:
  - 1. Full threaded connections;
- 2. Flanges that meet standard B16.5, Steel Pipe Flanges and Flange Fittings, 1988, or standard B16.24, Brass or Bronze Pipe Flanges, 1979, of the American National Standards Institute (ANSI), available from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Box 2300, Fairfield, New Jersey 07007–2300; or
- 3. Quick disconnect couplings that either meet ASTM F-1122, Standard Specifications for Quick Disconnect Couplings, published in 1987 by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187 or have been accepted by the U.S. Coast Guard.
- (E) Except as provided in subsection (F) of this section, each hose shall be marked near the two ends in the vicinity of the flanges, where it can best be seen, with the following:
  - 1. Any of the following:
  - a. The name of each product for which the hose may be used;
  - b. For oil products, the words "OIL SERVICE"; or

- c. For hazardous materials, the words "HAZMAT SERVICE SEE LIST" followed immediately by a letter, number or other symbol that corresponds to a list or chart contained in the terminal's operations manual or the vessel's transfer procedure documents which identifies the products that may be transferred through a hose bearing that symbol;
  - 2. Maximum allowable working pressure;
  - 3. Date of manufacture; and
- 4. Date of the latest annual test required by either 33 CFR 156.170 or subsection (a)(2) of this section, whichever is later. Dates of previous tests shall be obliterated.
- (F) The information required by subsections (a)(1)(E)3. and (a)(1)(E)4. of this section need not be marked on the hose if it is recorded in the hose records of the terminal or vessel and the hose is marked to identify it with that information.
- (G) The hose burst pressure and the pressure used for the test required by 33 CFR 156.170 shall not be marked on the hose and shall be recorded elsewhere at the terminal.
- (H) Each non-conducting length of hose used for transferring oil or for vapor control at onshore terminals shall be clearly marked "NON-CON-DUCTING" where it can best be seen.
- (2) Each hose used for transferring oil shall be inspected, maintained, handled, stored and tested in accordance with the recommended practices in "HOSE TECHNICAL INFORMATION BULLETIN: No. IP-11-4," except that the frequency of periodic hose testing shall be in accordance with 33 CFR 156.170 and subsections (A), (B) and (C) of this section.
- (A) All new hose and hose which has undergone a coupling repair shall be tested before it is placed in service.
- (B) Hose assemblies subjected to severe end pull, flattening, crushing or sharp kinking shall be immediately inspected and subjected to a pressure test, and if applicable, an electrical continuity test.
- (C) The following tests shall be conducted at intervals not to exceed twelve months:
  - 1. A hydrostatic pressure test;
  - 2. A vacuum test for hoses which have an inner tube liner; and
- 3. For electrically continuous lengths of hoses, an electrical continuity test which may be performed at the same time as the tests in subsection (d) of § 2341 of this Article 5.
  - (b) Loading Arms.
- (1) Each mechanical loading arm used for transferring oil and placed into service after June 30, 1973, shall meet the design, fabrication, material, inspection, and testing requirements in American National Standards Institute (ANSI) B31.3, published in 1990 and available from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Box 2300, Fairfield, New Jersey 07007–2300.
- (2) The manufacturer's certification that the standard American National Standards Institute (ANSI) B31.3 has been met shall be permanently marked on the loading arm or recorded elsewhere at the terminal with the loading arm marked to identify it with that information.
- (3) Each mechanical loading arm used for transferring oil shall have a means of being drained or closed before being disconnected.
- (4) Each mechanical loading arm shall be marked where it can best be seen, with the following:
  - (A) Maximum allowable working pressure; and
- (B) Date of the latest annual test required by 33 CFR 156.170; dates of previous tests shall be obliterated.
- (5) Each mechanical loading arm shall have its maximum allowable lateral movement envelope limits conspicuously marked on the terminal at the position of the loading arm. The allowable extension limits of the loading arm shall also be indicated visibly.
  - (c) Closure Devices.

The terminal shall have sufficient blank flanges or other means acceptable to the Division to blank off the ends of each hose or loading arm that is not connected for the transfer of oil. New, unused hose is exempt from this requirement.

(d) Connection.

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- (1) Each person who makes a bolted connection for transfer operations shall:
- (A) Use suitable material in joints and couplings to ensure a leak-free seal;
  - (B) Use a bolt in every hole;
  - (C) Use bolts of the correct size in each bolted connection; and
- (D) Tighten each bolt and nut uniformly to distribute the load sufficiently and to ensure a leak free seal.
- (2) A person who makes a connection for transfer operations shall not use any bolt that shows signs of strain or is elongated or deteriorated.
- (3) Except as provided in subsection (4) of this section, no person may use a connection for transfer operations unless it is:
  - (A) A bolted or full threaded connection; or
- (B) A quick disconnect coupling that either meets American Society for Testing and Materials (ASTM) F–1122, Standard Specifications for Quick Disconnect Couplings, published in 1987 by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187 or has been accepted by the U.S. Coast Guard.
- (4) No person may transfer oil to a vessel that has a fill pipe for which containment cannot practically be provided unless an automatic back pressure shutoff nozzle is used.
  - (e) Monitoring Devices.

Monitoring devices shall be installed and maintained at the terminal if required by the U.S. Coast Guard Captain of the Port.

- (f) Small Discharge Containment.
- (1) Except as provided in subsections (3) and (4) of this section, an onshore terminal shall have fixed catchments, curbing, or other fixed means to contain oil discharged at the following locations:
- (A) Each hose handling and loading arm area (that area on the terminal that is within the area traversed by the free end of the hose or loading arm when moved from its normal stowed or idle position into a position for connection); and
  - (B) Each hose connection manifold area.
- (2) The discharge containment means required by subsection (f)(1) of this section shall have a capacity of at least:
- (A) Two barrels if it serves one or more hoses of 6-inch inside diameter or smaller or one or more loading arms of 6-inch nominal pipe size diameter or smaller:
- (B) Three barrels if it serves one or more hoses with an inside diameter of more than 6 inches, but less than 12 inches, or one or more loading arms with a nominal pipe size diameter of more than 6 inches, but less than 12 inches; or
- (C) Four barrels if it serves one or more hoses of 12-inch inside diameter or larger or one or more loading arms of 12-inch nominal pipe size diameter or larger.
- (3) The terminal may use portable means of not less than 1/2 barrel capacity each to meet the requirements of subsection (f)(1) of this section for part or all of the terminal if the Division finds that fixed means to contain oil discharges are not feasible.
- (4) A mobile transfer unit, may use portable means of not less than five gallons capacity to meet the requirements of subsection (f)(1) of this section, when conducting transfer operations to or from tank vessels or barges.
  - (g) Discharge Removal.
- (1) Each onshore terminal and each mobile transfer unit shall have a means to remove discharged oil from the containment system required by subsection (f)(1) of this section safely and quickly without discharging the oil into the water.
- (2) Each onshore terminal and each mobile transfer unit shall safely remove discharged oil from the containment system within one hour of the completion of any transfer.
  - (h) Emergency Shutdown.
- (1) The terminal shall have an emergency means to shutdown and stop the flow of oil from the terminal to the tank vessel or barge.

- (2) A point in the transfer system at which the emergency means stops the flow of oil on the terminal shall be located near the dock manifold connection to minimize the loss of oil in the event of the rupture or failure of the hose, loading arm, or manifold valve.
- (3) For oil transfers, the means used to stop the flow under the subsection (h)(1) of this section shall stop that flow within:
- (A) 60 seconds on any terminal or portion of a terminal that first transferred oil on or before November 1, 1980; and
- (B) 30 seconds on any terminal that first transfers oil after November 1, 1980.
- (4) The VPIC and TPIC shall each be capable of ordering or activating the emergency shutdown.
- (5) If the VPIC or TPIC orders an emergency shutdown, the shutdown shall be capable of being activated and shall be activated within 30 seconds of the order.
- (6) To meet the requirements of subsections (h)(4) and (5) of this section, the means to stop the flow of oil shall be either of the following:
  - (A) An electrical, pneumatic or mechanical linkage to the terminal; or
- (B) A voice communications system continuously operated by a person on the terminal who at all times during the transfer can hear the communications and can, at any time, activate the emergency shutdown.
  - (i) Vapor Control Systems.

Any vapor control system at any marine terminal shall meet the following requirements of:

- (A) 2 CCR §§ 2550 through 2556;
- (B) 33 CFR Part 154, Subpart E; and
- (C) Any other state and federal regulations governing vapor control systems.

NOTE: Authority cited: Sections 8750, 8751, 8752, 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### HISTORY

- 1. New section filed 11–20–92; operative 12–21–92 (Register 92, No. 47).
- Amendment of subsection (a)(1)(D)3, new subsections (a)(1)(E)1-1c, amendment of subsection (a)(1)(F), new subsection (a)(1)(H), amendment of subsection (d)(3)(B) and new subsection (j) filed 10-5-94; operative 11-4-94 (Register 94, No. 40).
- 3. Amendment of section heading and section filed 3-9-99; operative 4-8-99 (Register 99, No. 11).

#### § 2381. Hose Tests.

NOTE: Authority cited: Sections 8755, 8756 and 8758, Public Resources Code. Reference: Sections 8750, 8751, 8755, 8756, 8757 and 8758, Public Resources

#### HISTORY

- New section filed 3-7-96 as an emergency; operative 3-7-96 (Register 96, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-96 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).

#### § 2385. Operations Manuals.

- (a) Operations Manual Requirements.
- (1) No terminal may conduct transfer operations except in accordance with an operations manual approved by the Division.
- (2) Operators of terminals shall maintain their operations manual so that it is:
  - (A) Current; and
  - (B) Readily available for examination by the Division.
- (3) Operators of terminals shall ensure that a sufficient number of copies of their operations manual are readily available for each TPIC and VPIC while conducting a transfer operation.
  - (b) Letter of Intent.
- (1) Any person who proposes to install a new marine terminal or proposes to assume control over the operation of an existing marine terminal shall, not less than 60 days prior to the intended assumption of operations, submit a letter of intent to operate the terminal to the Division.
- (2) The letter of intent required by subsection (b)(1) of this section may be in any form, but shall at least include the following:

- (A) The name, address, telephone number and facsimile number of the terminal operator;
- (B) The name, address, berth number, telephone number and facsimile number (if any) of the terminal;
  - (C) The proposed operations manual for the terminal; and
- (D) The proposed oil spill prevention training and certification programs required by 2 CCR §§ 2540 through 2548.
- (3) The operator of any terminal for which a letter of intent has been submitted shall, within five (5) days of any change in operations or information or a termination of use of the terminal, advise the Division in writing of the changes and shall cancel, in writing, the letter for any terminal at which transfer operations can no longer be conducted.
  - (c) Operations Manual: Approval.
- (1) The Division shall review and, within 30 working days of receipt at the Division, approve any operations manual which meets the requirements of this section. If the Division finds that the manual does not meet the requirements of this section, then it shall notify the submitting party within 30 working days of the manual's receipt.
  - (2) The approval by the Division is voided if the terminal operator:
- (A) Amends the operations manual without following the procedures in subsection (f) of this section; or
- (B) Fails to amend the operations manual when required by the Division.
- (3) Any terminal operator whose operations manual has been disapproved by the Division may appeal the disapproval to the Commission, provided that the appeal is submitted in writing to the Commission Executive Officer within 30 days after the operator receives notice of the disapproval.
  - (d) Operations Manuals: Contents.
  - (1) Each operations manual required by this section shall:
- (A) Describe how the applicant meets the operating rules and equipment requirements specified in this article and in 33 CFR Parts 154 and 156, Subpart A; and
- (B) Describe the responsibilities of personnel under this section and under 33 CFR Parts 154 and 156, Subpart A, in conducting oil transfer operations.
- (2) Each operations manual required by this section shall contain all of the following:
- (A) Maps and diagrams showing the location and configuration of the terminal, including, at minimum, the following:
  - 1. Scale and direction:
- 2. A point on the map with its latitude and longitude taken with a geographic positioning system, with differential correction;
- 3. A site plan of the major structural components of the current facility, including, but not limited to, piers, mooring structures, buoys, manifolds, mechanical loading arms, pipelines, and pipeline end manifolds (PLEMs);
- 4. The location of the general and emergency shutdown system controls:
  - 5. Locations of any environmental and discharge monitoring devices;
- 6. Storage locations for pollution containment equipment including those deployed during transfer operations;
- 7. Configuration of boom containment and arrangements for boom stand-off for each type of transfer operation that takes place at the terminal:
- 8. Location and type of fire extinguishing, first aid and other safety equipment;
  - 9. Location of facilities used for personnel shelter, if any;
- 10. Locations of environmentally sensitive areas in the immediate vicinity of the terminal, if any;
- 11. Where applicable the locations of special shut-off valves and other safety equipment to be used in cases of earthquakes;
  - 12. Locations of sump wells, if any, at or in the vicinity of the terminal;
  - 13. Emergency exit routes for personnel; and
  - 14. Bathymetry and sea floor characteristics;

- (B) A physical description of the terminal including a plan of the terminal showing mooring areas, transfer locations, control stations, and locations of safety equipment;
  - (C) The hours of operation of the terminal;
- (D) The sizes, including the maximum size of tank vessel or barge that can be accommodated at the terminal, types, and number of tank vessels and barges to and from which the terminal can transfer oil at any time. The maximum tank vessel size shall be specified by its:
  - 1. Length Overall;
  - 2. Maximum or Loaded Draft; and
  - 3. Deadweight Tonnage (DWT).
  - (E) For each product transferred at the terminal:
  - 1. Generic or chemical name; and
  - 2. The following cargo information:
- a. The name of the cargo, as listed under Appendix II of Annex II of MARPOL 73/78, Table 30.25–1 of 46 CFR 30.25–1, Table 151.05 of 46 CFR 151.05–1, or Table 1 of 46 CFR 153;
  - b. A description of the appearance of the cargo;
  - c. A description of the odor of the cargo;
  - d. The hazards involved in handling the cargo;
  - e. Instructions for safe handling of the cargo;
- f. The procedures to be followed if the cargo spills or leaks or if a person is exposed to the cargo; and
- g. A list of fire fighting procedures and extinguishing agents effective with fires involving the cargo.
- (F) The minimum number of persons on duty during transfer operations and their duties:
- (G) The names and telephone numbers of the terminal operator or operators, U.S. Coast Guard, California State Office of Emergency Services, and other personnel who may be called by the employees of the terminal in an emergency;
- (H) A description of each communication system required by Section 2370 of these regulations;
- (I) A description of the facilities and the location of each personnel shelter, if any;
- (J) A description and instructions for the use of drip and discharge collection, and vessel slop reception facilities, if any;
- (K) A description of and instructions for seep monitoring from sump wells, if any;
- (L) A description of the operation of and the component location of each emergency shutdown system;
- (M) Quantity, types, locations, and instructions for use of oil discharge monitoring devices, if any;
- (N) Quantity, type, location, instructions for use, and time required for gaining access to and deployment of initial response containment equipment;
- (O) A description of the spill containment for transfer operations required under Section 2395 and, if applicable, the basis used for determining that the onshore marine terminal is subject to high velocity currents as defined in Section 2395, subsection (b)(3);
- (P) Quantity, type, location and instructions for uses of fire extinguishing equipment required by federal, state and local fire prevention regulations;
- (Q) The maximum relief valve setting or, where relief valves are not provided, maximum system pressure for each transfer system and the method used to determine that pressure;
  - (R) Procedures for:
- 1. Operating each mechanical loading arm including the limitations of each loading arm;
  - 2. Transferring oil;
  - 3. Completion of pumping;
  - 4. Emergencies; and
- 5. Notifying the Division of damage as required by subsection (e) of § 2325 of this Article 5.
  - (S) Procedures for reporting and initially containing oil discharges;

- (T) A brief summary of applicable federal, state, and local oil pollution laws and regulations;
- (U) Procedures for shielding portable lighting authorized by the Division under Section 2365;
  - (V) A description of the training and qualification program for TPIC's;
  - (W) A list of all designated TPIC's for the terminal;
- (X) Statements explaining that each oil or hazardous materials transfer hose is marked either with the name of each product which may be transferred through the hose; with the words, "OIL SERVICE"; or with letters, number or other symbols representing all such products and the location in the operations manual where a chart or list of the symbols used and a list of the compatible products which may be transferred through the hose can be found for consultation before each transfer; and
- (Y) A list and brief description of all operating restrictions placed upon the terminal by federal, state or local authorities with proper jurisdiction.
- (3) If a terminal collects vapors emitted from vessel cargo tanks for recovery, destruction, or dispersion, the operations manual shall contain a description of the vapor control system at the terminal which includes the following:
- (A) A line diagram or simplified piping and instrumentation diagram (P&ID) of the terminal's vapor control system piping, including the location of each valve, control device, pressure–vacuum relief valve, pressure indicator, flame arrester and detonation arrester; and
- (B) A description of the vapor control system's design and operation, including:
  - 1. The vapor line connection;
  - 2. Startup and shutdown procedures;
  - 3. Steady state operating procedures;
- 4. Provisions for dealing with pyrophoric sulfide (for facilities which handle inerted vapors of cargos containing sulfur);
- 5. Alarms, shutdown devices and Safety Analysis Function Evaluation (SAFE) chart as prescribed in Recommended Practice 14C, Fourth Edition, published on September 1, 1986, by the American Petroleum Institute (API), Publications and Distribution Section, 1220 L Street, NW, Washington, DC 20005; and;
  - 6. Pre-transfer equipment inspection requirements:
- (4) Each operations manual shall also contain an electrical hazardous (classified) area diagram of the current terminal, as described in National Fire Protection Association (NFPA) No. 70, National Electrical Code, Articles 500 and 515, 1996 edition, published by NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. This diagram need not be bound with the operations manual, but must be located at the terminal. Copies of the operations manual submitted to the Division under subsection (a)(3)(B) of section 2385 need not contain the diagram.
- (5) For ease of amendment, the terminal's operations manual shall be contained in a binder which allows easy replacement of pages. The terminal operator shall incorporate a dated copy of each amendment to the operations manual under subsection (f) of this section in each copy of the manual with the related existing requirement or add the amendment at the end of each manual if not related to an existing requirement. Language in the manual which no longer applies shall be removed from the manual.
- (6) The operations manual shall be written in the order specified in subsections (d)(2) and (d)(3) of this section or contain a cross—referenced index page in that order.
  - (e) Operations Manual; Offshore Terminals.
- (1) Each operations manual for an offshore marine terminal shall contain all applicable provisions of subsection (d) of this section and shall also include at least the following:
- (A) Calculations with supporting data and other documentation to show that the charted water depth at each berth of the terminal is sufficient to provide at least a 6-foot net underkeel clearance at all times and under all conditions for each tank vessel or barge that the terminal expects to be moored at the terminal.
- (B) A description of prevailing currents, tides, winds and other weather conditions most commonly experienced at the terminal and a descrip-

- tion of the monitoring equipment, if any, employed at the terminal which relays information about wind, wave and current conditions at the terminal
- (C) A description of specific limiting wind, wave, current and meteorological conditions under which each of the following will occur:
  - 1. Oil transfer operations will be shut down;
- 2. Departure of the tank vessel or barge from the mooring will be required; and
  - 3. Mooring operations will be prohibited.
- (D) A description of the navigational aids, if any, provide for approach to the berth and times of operation;
  - (E) A description of mooring support vessels duties and services;
- (F) A detailed description of mooring and unmooring maneuvers with supporting graphical illustrations for each berth of the terminal;
- (G) A description of the duties and responsibilities of mooring masters and assistant mooring masters including the numbers of such personnel that will be in attendance at mooring, unmooring or cargo transfer operations; and
- (H) A description of each of the tugs available in compliance with Section 2390, subsection (b), including, at least, the following:
  - 1. Bollard pull; and
  - 2. Towing and pushing arrangements.
- (2) The additional provisions required by subsection (e)(1) of this section may be incorporated under appropriate existing headings of the operations manual or may be added to the end of the manual.
  - (f) Operations Manual: Amendment.
- (1) Using the following proceedings, the Division may require the terminal operator to amend the operations manual if the Division finds that the operations manual does not meet the requirements of this section:
- (A) The Division shall notify the terminal operator in writing of any inadequacies in the operations manual within 30 days of receipt of the manual.
- (B) The terminal operator may submit written information, views, and arguments on and proposals for amending the manual within 30 days from the date of the Division notice.
- (C) After considering all relevant materials presented, the Division shall, within 30 days of receipt of the material submitted under subsection (f)(1)(B) of this section, notify the terminal operator of any amendment required or adopted, or rescind the notice.
- (2) The amendment becomes effective 30 days after the terminal operator receives the Division's notice, unless the terminal operator petitions the Division Chief to review the Division's notice, in which case its effective date is delayed pending a decision by the Division Chief. Petitions to the Division shall be submitted in writing.
- (3) If the Division finds that there is a condition requiring immediate action to prevent the discharge or risk of discharge of oil that makes the procedure in subsection (f)(1) of this section impractical or contrary to the public interest, the Division may issue an amendment effective on the date the terminal operator receives notice of it. In such a case, the Division shall include a brief statement of the reasons for the findings in the notice. The owner or operator may petition the Division Chief to review the amendment, but the petition shall not delay the amendment.
- (4) The terminal operator may propose amendments to the operations manual by submitting any proposed amendments in writing to the Division.
- (5) The proposed amendment shall take effect upon approval by the Division or, if the Division takes no action within 30 days of its receipt, then at the end of that period. If the operator requests that immediate action be taken, the Division may provide immediate approval if it determines that circumstances warrant it, provided that such approval is conditioned upon subsequent review within 30 days of receipt of the proposed amendment.
- (6) The Division shall respond to proposed amendments submitted under subsection (f)(4) of this section by:
  - (A) Approving or disapproving the proposed amendments;

- (B) Advising the terminal operator whether the request is approved, in writing;
- (C) Including any reasons in the written response if the request is disapproved; and
- (D) If the request is made under subsection (f)(5) of this section, immediately approving or rejecting the request.
- (7) Amendments which do not affect compliance with the requirements of this article, such as amendments to personnel and telephone number lists required by subsection (d)(2)(G) of this section do not require prior Division approval, but the Division shall be advised of such amendments as they occur.

NOTE: Authority cited: Sections 8750, 8751, 8755, and 8758, Public Resources Code. Reference: Sections 8750, 8751, 8755, 8757, and 8758, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Amendment of subsections (d)(2)(V)–(W), new subsections (d)(2)(X), (Y) and (d)(4) and subsection redesignation filed 10–5–94; operative 11–4–94 (Register 94, No. 40).
- 3. Amendment filed 3-9-99; operative 4-8-99 (Register 99, No. 11).

#### § 2390. Additional Requirements at Offshore Terminals.

(a) Applicability.

The provisions of Section 2390, shall apply only at offshore terminals.

- (b) Tug Requirements.
- (1) During every mooring and unmooring operation, a tug or tugs shall be available and standing by in readiness to assist the tank vessel. The tug or tugs shall have bollard pull sufficient to assist the tank vessel.
- (2) At all times during a transfer operation a tug or tugs shall be available to the barge. The tug or tugs shall have bollard pull sufficient to assist the barge.
  - (c) Mooring Masters.
- (1) For the purpose of this section, a "mooring master" means a person who holds a valid U.S. Coast Guard issued license as Master or Mate and an endorsement as First Class Pilot for the area at which the terminal is located.
- (2) A mooring master shall be aboard every tank vessel or barge for every mooring and unmooring operation at that terminal.
  - (d) Assistant Mooring Master.
- (1) For the purpose of this section, an "assistant mooring master" means a person who holds a valid U.S. Coast Guard issued license as Master or Mate and has experience in mooring and unmooring operations at that terminal. This person shall not be a member of the vessel's crew.
- (2) In addition to the requirement in subsection (c)(2) of this section, an assistant mooring master shall be aboard the tank vessel for every mooring and unmooring operation at that terminal.
  - (e) Diver Inspection of Submarine Hose.

Each terminal operator shall ensure that a diver inspection of any submerged hose string to be used has been conducted prior to every hookup if:

- (1) The submarine hose has not been lifted within 15 days of the last previous transfers; or
- (2) There has been a passage of a storm or seismic event affecting the area which may have damaged or covered the submarine hose.
  - (f) Pipeline Requirements.
- (1) At all times, offshore terminals shall have the capability of drawing and maintaining a vacuum on all submarine pipelines containing oil.
- (2) At all times during mooring and unmooring operations at offshore terminals, a vacuum shall be maintained on all submarine pipelines containing oil which do not lead to a berth where another vessel is already moored and which:
  - (A) Serve the berth where the vessel is being moored or unmoored; or
- (B) Are in or near the approach path of the vessel being moored or unmoored.
  - (g) Underkeel Clearance.

Each tank vessel or barge that conducts or is intending to conduct a transfer operation at an offshore terminal shall at all times during the transfer operation and under all conditions have a net underkeel clearance of at least six (6) feet from the sea-floor and any known obstructions

(h) Bathymetric Surveys.

Offshore terminals shall conduct annual bathymetric surveys of the berth and maneuvering areas adjacent to the berth.

NOTE: Authority cited: Sections 8750, 8751 and 8755, Public Resources Code. Reference: Section 8670.17, Government Code; Sections 8750, 8751, and 8755, Public Resources Code

#### HISTORY

- 1. New section filed 11–20–92; operative 12–21–92 (Register 92, No. 47).
- 2. New subsection (h) filed 10-5-94; operative 11-4-94 (Register 94, No. 40).

#### § 2395. Spill Containment for Transfer Operations.

(a) Applicability.

The provisions of this section apply to:

- (1) All transfer operations where the oil transferred is a persistent oil;
- (2) All transfer operations into vessel's tanks containing persisent oil or residues of persistent oil.
  - (b) General.
- (1) For the purpose of this section and section 2396, "persistent oil" means a petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. "Non-persistent oil" means a petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly; specifically, an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645 degrees Fahrenheit and at least 95 percent of which, by volume, distills at a temperature of 700 degrees Fahrenheit.
- (2) For the purpose of this section and section 2396, the term "boom" means flotation boom or other effective barrier containment material suitable for containment of oil that is discharged onto the surface of the water.
- (3) For the purpose of this section and section 2396, an "offshore marine terminal subject to high velocity currents" means an onshore terminal at which the maximum current velocities are 1.5 knots or greater for the majority of the days in the calendar year.
  - (c) Vessel Loading Operations at Onshore Terminals.
- (1) Prior to commencement of each transfer operation from the terminal to the vessel at an onshore terminal, the terminal operator shall deploy boom to enclose the water surface surrounding the vessel so as to provide common containment area for:
  - (A) The entire vessel at the waterline; and
  - (B) Either of the following:
  - 1. The entire dock; or
  - 2. Portions of the dock where oil may spill into the water.
- (2) To meet the requirements of subsection (c)(1)(B) of this section, where the face of the dock is capable of acting as an effective barrier on the inboard side of the vessel, the boom on that side may be deployed so that it provides containment between the vessel and the dock.
- (3) The boom shall be deployed so that it provides a stand-off of not less than 4 feet from the outboard side of the vessel.
- (4) For onshore marine terminals subject to high velocity currents, the terminal operator may provide sufficient boom appropriate to the conditions at the terminal, trained personnel and equipment, maintained in a standby condition at the berth for the duration of the entire transfer operation, so that a length of at least 600 feet of boom will be deployed for effective containment within 30 minutes of a spill as an alternative to the requirements set forth in subsections (c)(1) and (c)(2) of this section.
  - (d) Vessel Offloading Operations at Onshore Terminals.
- (1) Prior to commencement of each transfer operation from the vessel to the terminal at an onshore terminal, the terminal operator shall deploy boom to enclose the water surface on the inboard side of the vessel, so as to provide common containment area for:
  - (A) The vessel's entire inboard length, at the waterline; and
  - (B) Either of the following:
  - 1. The entire dock; or
  - 2. Portions of the dock where oil may spill into the water.

- (2) Where the face of the dock is capable of acting as an effective barrier, the boom shall be deployed so that it provides containment between the vessel and the dock.
- (3) For onshore marine terminals subject to high velocity currents, the terminal operator may provide sufficient boom appropriate to the conditions at the terminal, trained personnel and equipment, maintained in a standby condition at the berth for the duration of the entire transfer operation, so that a length of at least 600 feet of boom will be deployed for effective containment within 30 minutes of a spill as an alternative to the requirements set forth in subsections (d)(1) and (d)(2) of this section.
  - (e) Transfer Operations at Offshore Terminals.

Prior to commencement of each transfer operation at offshore terminals, the terminal operator shall provide sufficient boom appropriate to the conditions at the terminal, trained personnel and equipment, maintained in a stand-by condition at the berth, so that a length of at least 600 feet of boom will be deployed for effective containment within 30 minutes of a spill.

NOTE: Authority cited: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code. Reference: Section 8670.28, Government Code; and Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### HISTORY

- 1. New section filed 11-20-92; operative 12-21-92 (Register 92, No. 47).
- 2. Amendment of subsections (b)(1)–(3), (c)(4), (d)(3) and (e)(1)–(2) filed 10–5–94; operative 11–4–94 (Register 94, No. 40).
- Amendment of subsection (a), repealer and new subsections (a)(1)–(2), amendment of subsection (e), and repealer of subsections (e)(1)–(2) filed 3–9–99; operative 4–8–99 (Register 99, No. 11).

#### § 2396. Spill Containment for Ballasting or Deballasting Operations for Tank Vessels at Marine Terminals.

(a) Applicability.

The provisions of § 2396 apply to tank vessels conducting ballasting or deballasting operations at terminals where any part of the cargo on board or any part of the cargo last carried is a persistent oil. These provisions do not apply to ballasting operations to a tank vessel's segregated ballast tanks.

- (b) Tank Vessel Ballasting or Deballasting Alongside Onshore Terminals
- (1) Prior to commencement of any ballasting or deballasting operation at an onshore terminal, the terminal operator shall ensure that boom is deployed or maintained in a standby condition, as appropriate, as specified in subsections (c) or (d) of section 2395.
- (2) At onshore terminals not subject to high velocity currents, where the tank vessel uses the sea valves on the outboard side of the vessel, the booming shall conform to the requirements of subsections (c)(1), (c)(2) and (c)(3) of section 2395. Where the sea valves on the terminal side of the vessel are used, the booming shall conform to the requirements of subsections (d)(1) and (d)(2) of section 2395.
  - (c) Tank Vessel Ballasting or Deballasting at Offshore Terminals.

Prior to commencement of any ballasting or deballasting operation at an offshore terminal, the terminal operator shall ensure that the provisions of subsection (e)(2) of section 2395, have been complied with. NOTE: Authority cited: Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code. Reference: Section 8670.28, Government Code; and Sections 8750, 8751, 8752, 8755, 8757 and 8758, Public Resources Code.

#### **HISTORY**

1. New section filed 10-5-94; operative 11-4-94 (Register 94, No. 40).

#### § 2400. Mitigation Monitoring Requirements.

If an environmental review is or has been conducted for all or any part of a terminal or for terminal operations pursuant to Sections 21002 through 21082.2 of the Public Resources Code and Title 14, California Code of Regulations, Sections 15000 et seq., and a lead or responsible agency requires compliance with mitigation measures as a condition for installation or operation of that terminal, then:

(a) The terminal operator shall comply with the required mitigation measures; and

(b) If the mitigation measures relate to operation of the terminal, both the mitigation measures and monitoring program required shall be incorporated into the terminal operations manual.

NOTE: Authority cited: Sections 8750, 8751, 8755 and 8758, Public Resources Code. Reference: Sections 21002, 21004, 21067, 21069, 21081 and 21082.2, Public Resources Code; Sections 15051, 15052, and 15386, Title 14, California Code of Regulations.

#### HISTORY

- 1. New section filed 11–20–92; operative 12–21–92 (Register 92, No. 47).
- 2. Subsection redesignation filed 10–5–94; operative 11–4–94 (Register 94, No. 40).

### § 2405. Notifications Regarding Apparent or Threatened Violations.

- (a) Authorized Agents or Employees.
- (1) For the purposes of Sections 2405 and 2406, each of the following shall be referenced as an "authorized agent or employee" of the Division:
  - (A) The Executive Officer of the Commission;
  - (B) The Assistant Executive Officer of the Commission;
  - (C) The Division Chief;
  - (D) The Assistant Chief of the Division;
- (E) The Marine Terminal Safety Field Operations Supervisor of the Division;
  - (F) Any Marine Terminal Safety Supervisor of the Division;
  - (G) Any Marine Terminal Safety Specialist of the Division;
  - (H) Any Marine Terminal Safety Inspector of the Division; or
- (I) Any other staff as designated by the Executive Officer or Division Chief.
- (2) Any and all of the referenced agents or employees listed in subsection (a)(1) of this section are authorized to make a determination as to apparent or threatened violations, as defined in Section 2315, subsection (b) and subsection (x) of Article 5.
  - (b) Apparent or Threatened Violations: Reporting and Records.
- (1) In the event that an authorized agent or employee of the Division determines that there is an apparent or threatened violation, he or she shall notify the TPIC or VPIC, as appropriate, of the apparent or threatened violation as soon as he or she has an opportunity to do so.
- (2) Each and every authorized agent or employee of the Division shall report to the Division any and all apparent or threatened violations.
- (3) The Division shall maintain records of all reported violations for a period of not less than five (5) years.
- (4) The Division shall, upon request, make available to the Administrator or the U.S. Coast Guard copies of records of violations.

NOTE: Authority cited: Sections 8750, 8751, 8755 and 8760, Public Resources Code. Reference: Sections 8670.66, 8670.67 and 8670.69.4, Government Code; and Sections 8750, 8751, 8755 and 8760, Public Resources Code.

#### HISTORY

- 1. New section filed 11–20–92; operative 12–21–92 (Register 92, No. 47).
- 2. Amendment of section heading and text filed 3–7–94; operative 4–6–94 (Register 94, No. 10).
- 3. Amendment of subsection (a)(2) filed 3–9–99; operative 4–8–99 (Register 99, No. 11)

#### § 2406. Notifications Regarding Discharge Threat.

- (a) For the purpose of this section only, the term "discharge threat" means an apparent or threatened violation of regulations which, if unabated, would directly cause or substantially increase the risk of an unauthorized discharge of oil into marine waters at a terminal.
- (b)(1) In the event that an authorized agent or employee of the Division determines that there is a discharge threat, the agent or employee shall immediately notify the TPIC or VPIC, as appropriate, of the discharge threat.
- (2) Upon receiving notification of a discharge threat, the TPIC or VPIC, as appropriate, shall take immediate action to eliminate the threat, either by correcting the apparent or threatened violation or by suspending transfer operations until the apparent or threatened violation is corrected.
- (c) If the TPIC or VPIC does not take immediate action to eliminate the discharge threat, either by correcting the apparent or threatened violation or by suspending transfer operations until the apparent or threatened violation is corrected, then:

- (1) The authorized agent or employee shall notify the Division of the immediate threat; and
  - (2) The Division shall then immediately notify:
  - 1. The U.S. Coast Guard;
  - 2. The Administrator; and
  - 3. The District Attorney of the County in which the terminal is located.
- (3) The Division or the Executive Officer may also take whatever legal action is necessary and appropriate to obtain an order from the superior court having jurisdiction over the terminal to abate the discharge threat without first complying with the provisions of § 2407 of this Article 5. NOTE: Authority cited: Sections 8750, 8751, 8755 and 8760, Public Resources Code. Reference: Sections 8670.66, 8670.67 and 8670.69.4, Government Code; and Sections 8750, 8751, 8755 and 8760, Public Resources Code.

#### **HISTORY**

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

#### § 2407. Enforcement Procedures.

- (a) For purposes of this section, the term, "cited party," means the person or entity which appears to have committed a violation of a provision or provisions of this Article 5 or Article 5.3.
  - (b) Classifications of violations:
- (1) All violations of provisions of this article 5 and Article 5.3 shall be considered within one of three classes:
- (A) Class 1: Violations each of which could not directly result in a discharge of oil or pose a threat to public health and safety and the environment
- (B) Class 2: Violations each of which could result in a discharge of oil or pose a threat to public health and safety and the environment under certain circumstances, in combination with other violations or over time.
  - (C) Class 3
- Violations each of which could, by itself, directly result in a discharge of oil or pose a threat to public health and safety and the environment; or
- 2. Violations of Section 2320, sub. (c), concerning access by the Division to the terminal, terminal records, or vessels at the terminal.
- (2) If a single person or entity has committed a number of Class 2 violations at the same time which, taken together, could directly result in discharge of oil or pose a threat to public health and safety and the environment, then each violation shall be considered a separate Class 2 violation and the total combination of violations may be considered a separate Class 3 violation.
- (3) If a single person or entity has committed three (3) Class 1 violations in any twelve-month period, five (5) in any 24-month period, or seven (7) in any 36-month period, that series of violations may be considered a single Class 2 violation.
- (4) If a single person or entity has committed three (3) Class 2 violations in any twelve-month period, five (5) in any 24-month period, or seven (7) in any 36-month period, that series of violations may be considered a single Class 3 violation.
- (c) When it appears to the Division Chief that a cited party has committed a Class 3 violation, the Division Chief shall report the apparent violation to the Executive Officer.
- (d) Prior to pursuing any enforcement action under the provisions of Government Code Sections 8670.65 through 8670.67, the following preliminary procedures shall be followed:
- (1) The Division Chief shall provide written notice to the cited party containing the following:
- (A) A description of the Class 3 violation or the lesser violations making up the Class 3 violation;
  - (B) A statement that enforcement proceedings may be initiated; and
- (C) Notification that the cited party may, within ten working days after receipt of the notice, submit a request in writing to the Chief for a preliminary meeting.
- (2) If the cited party requests a preliminary meeting with the Chief, that meeting shall be held prior to any further enforcement actions and may

- include any discussions relating to the apparent violation or violations in question, including, but not limited to, the question as to whether a violation had in fact occurred, what evidence there was for the apparent violation, and what classification should apply for each violation.
- (3) If the cited party so requests and agrees to pay for all costs, the preliminary meeting shall be recorded and a transcript shall be prepared.
- (4) The preliminary meeting shall be scheduled at the Division Chief's discretion, but shall in no event be scheduled more than thirty (30) calendar days after the request for the meeting is received by the Division Chief.
- (5) Within ten (10) working days after the preliminary meeting, the Division Chief shall provide written notice to the cited party of the decision as to whether enforcement action is to proceed.
- (6)(A) Within ten working days after receipt of the notice regarding the decision of the Division Chief following the preliminary meeting, the cited party may appeal the decision to the Executive Officer of the Commission.
  - (B) Any appeal to the Executive Officer shall be submitted in writing.
- (C) If the decision of the Division Chief is appealed to the Executive Officer, no enforcement action shall be taken unless and until the Executive Officer directs the Division Chief to proceed.
- (e) If, after the preliminary procedures under subsection (d) of this section are followed, it appears to the Executive Officer that the cited party has committed a Class 3 violation of any provision or provisions of this Article 5 or 5.3 the Executive Officer may take any or all of the following actions:
- (1) The Executive Officer may request that the Administrator do one or more of the following where appropriate:
- (A) Issue an order under Government Code § 8670.69.4 requiring that person to cease and desist;
- (B) Take whatever legal action that is necessary and appropriate, to obtain an order from the court enjoining the apparent and threatened violation; or
- (C) Initiate and pursue proceedings under Government Code § 8670.66 or 8670.67 to subject the cited party to statutory penalties.
- (2) The Executive Officer may do one or more of the following:
- (A) Take whatever legal action is necessary and appropriate to obtain an order from the court enjoining the apparent or threatened violation; or
- (B) If appropriate, take whatever action is necessary and appropriate to initiate and pursue proceedings under Government Code § 8670.66 to subject the cited party to statutory penalties.
- (f)(1) The Executive Officer shall notify the U.S. Coast Guard of any apparent violation which may also constitute violation of federal law or regulation.
- (2) The Executive Officer shall keep the Administrator fully apprised if any action is taken under subsection (e)(2).

NOTE: Authority cited: Sections 8750, 8751, 8755 and 8760, Public Resource Code. Reference: Sections 8670.66, 8670.67 and 8670.69.4, Government Code; and Sections 8750, 8751, 8755 and 8760, Public Resources Code.

#### HISTORY

- 1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).
- Editorial correction adding omitted subsections (e)(2)(A)–(f)(2) and NoTE (Register 94, No. 12).

# Article 5.1. Marine Terminal Physical Security

#### § 2430. The Marine Facilities Division.

- (a) There is in the Staff of the California State Lands Commission the Marine Facilities Division, which has the primary responsibility for carrying out the provisions of the Lempert–Keene–Seastrand Oil Spill Prevention and Response Act of 1990 within the Commission's jurisdiction.
- (b) The primary office of the Division is at 200 Oceangate, Suite 900, Long Beach, California 90802–4335, telephone (562) 499–6312.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.

#### HISTORY

 New article 5.1 (sections 2430–2445) and section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2431. Purpose and Applicability.

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 5.1 of the California Code of Regulations is to provide a physical security program which ensures the best achievable protection of the public health and safety and of the environment at marine terminals.
- (b) The provisions of this article shall apply to all marine terminals in the State of California.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2432. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

- (a) "Division" means the Marine Facilities Division of the California State Lands Commission.
- (b) "Division Chief" means the Chief of the Marine Facilities Division or any employee of the Division authorized by the Chief to act on his behalf.
- (c) "Marine terminal" means a facility other than a vessel, located on or adjacent to marine waters in California, used for transferring oil to or from tank vessels or barges. The term references all parts of the facility including, but not limited to, structures, equipment and appurtenances thereto used or capable of being used to transfer oil to or from tank vessels or barges. For the purpose of these regulations, a marine oil terminal includes all piping not integrally connected to a tank facility. A tank facility means any one or combination of above ground storage tanks, including any piping which is integral to the tank, which contains crude oil or its fractions and which is used by a single business entity at a single location or site. A pipe is integrally related to an above ground storage tank if the pipe is connected to the tank and meets any of the following:
  - (1) The pipe is within the dike or containment area;
- (2) The pipe is connected to the first flange or valve after the piping exits the containment area; or
- (3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.
- (d) "Marine Terminal Security Officer" or "MTSO" means a person employed by the terminal operator designated to be responsible for terminal security.
- (e) "Marine Terminal Physical Security Plan" means a written document describing the practices, procedures, responsibilities, equipment and structures that provide for the security of the terminal.
- (f) "Physical Security Survey and Assessment" means the terminal operator's identification and evaluation of weaknesses in physical security of important assets, infrastructures, appurtenances and procedures that are critical to the marine terminal, that, if damaged, could cause harm to people or to the environment.
- (g) "Terminal Operator" means any person or entity which owns, has an ownership interest in, charters, leases, rents, operates, participates in the operation of or uses a terminal, pipeline, or facility. "Terminal Operator" does not include any entity which owns the land underlying the terminal or the terminal itself, where the entity is not involved in the operations of the terminal.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8755, 8756 and 8757, Public Resources Code; and Section 25270.2, Health and Safety Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

### § 2433. Requirements for Marine Terminal Security Program.

Each marine terminal operator must implement a marine terminal security program that, at a minimum:

- (a) Provides for the safety and security of persons, property and equipment on the terminal and along the dockside of vessels moored at the terminal:
- (b) Prevents or deters the carrying of any unauthorized weapon, incendiary, or explosive on or about any person inside the terminal, including within his or her personal articles;
- (c) Prevents or deters the introduction of any weapon, incendiary, or explosive in stores or carried by persons onto the terminal or onto the dockside of vessels moored at the terminal; and
- (d) Prevents or deters unauthorized access onto the terminal and onto the dockside of vessels moored at the terminal.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2434. Designation of MTSO and Alternates.

Each terminal operator shall designate an MTSO by name with 24-hour contact information, and an alternate or alternates when the MTSO is unavailable.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2435. Responsibilities of the MTSO.

Each MTSO must, at a minimum, ensure that all of the following are undertaken and completed:

- (a) An initial comprehensive physical security survey and assessment has been conducted, documented and maintained in a location determined by the MTSO;
- (b) Ongoing security surveys are conducted at least annually and whenever a security incident or circumstances warrant changes;
- (c) The comprehensive physical security survey and assessment are used to formulate a security plan;
- (d) The Marine Terminal Physical Security Plan is implemented, maintained and periodically updated;
- (e) Personnel responsible for security are trained in all aspects of the Marine Terminal Physical Security Plan;
- (f) Employees, visitors and contractors requiring access to the terminal are provided with security awareness information;
- (g) Vehicle access controls with designated parking areas and noparking zones are established;
  - (h) Periodic security drills and exercises are conducted;
- (i) The terminal has an identification and verification process for all employees, vendors and other persons whose duties require them to have access to the terminal and a tracking process for all vehicles allowed entry to the terminal;
- (j) All occurrences or suspected occurrences of terrorist acts and related activities are reported to National Response Center, telephone (800) 424–8802, and local law enforcement agencies having jurisdiction at the marine terminal. Such occurrences include bombings, bomb threats, suspicious letters or packages and incidents related to the intentional release of chemical, biological or radio active agents. Records of such occurrences shall be maintained at the marine terminal for three (3) years; and
- (k) Procedures for notification of security incidents or threats to terminal and vessel personnel are established.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2436. Marine Terminal Physical Security Plan.

- (a) The MTSO shall develop and maintain a Marine Terminal Physical Security Plan, in writing, for countering risks and threats. The plan shall, at a minimum, document the practices, procedures, responsibilities, equipment, and structures utilized in complying with all of the provisions of Section 2433.
- (b) The Marine Terminal Physical Security Plan shall, at a minimum, contain all of the following:
  - (1) A map, diagram or site plan of the layout of the terminal showing:
  - (A) Perimeter fencing;
  - (B) Main access to the terminal:
  - (C) Other accesses to the terminal;
  - (D) Exit and entry routes for vessel crew members;
  - (E) Waterfront areas and vessel berths;
  - (F) Designated vehicle parking areas;
- (G) Emergency exit routes for personnel and vehicles from the terminal:
- (H) Location of lighting, motion detectors, cameras and other surveillance equipment;
  - (I) Fixed security posts and mobile routes; and
  - (J) Restricted areas.
- (2) The names and contact telephone numbers of the Terminal Manager, the MTSO and alternates, and all terminal security personnel;
- (3) The duties of the MTSO, alternates and terminal security personnel;
- (4) The minimum number of terminal security personnel on duty and their responsibilities when oil transfer operations are being conducted;
- (5) A description of the physical security arrangements for the terminal including the minimum number of security personnel on duty, if any, when no transfer operations are being conducted;
- (6) A description of the procedures and arrangements for elevated security in compliance with the U.S. Coast Guard Captain of the Port's directives regarding threat escalation;
  - (7) Procedures for reporting security threats or breaches of security;
- (8) The telephone numbers of the National Response Center, (800) 424–8802 and other local agencies having jurisdiction at the marine oil terminal:
- (9) Findings of the initial comprehensive physical security survey and assessment:
- (10) Equipment, measures and procedures at the terminal that are used to prevent the introduction of unauthorized weapons, incendiaries or explosive devices or any other unauthorized dangerous devices that may be used to cause harm or damage to people, vessels or terminals by any means onto the terminal from the shore side;
- (11) Measures to prevent unauthorized persons gaining access onto the terminal, onto vessels moored at the terminal and to restricted areas of the terminal;
- (12) Measures or procedures to permit entry of persons without valid identification;
- (13) Procedures for verification of identity of terminal employees, vendors, contractors, vessel agents, truck drivers, government agents and other visitors to the terminal to ensure that they have legitimate business at the terminal;
- (14) Measures and procedures to permit entry for scheduled and unscheduled deliveries including hazardous materials to the terminal or vessel moored at the terminal in advance;
- (15) Procedures and measures for the terminal's security personnel's response to security threats or breaches of security;
- (16) Duties of terminal personnel other than security personnel in the event of a security threat or breach of security;
- (17) Procedures to be followed when unauthorized persons are discovered on the terminal;
- (18) Any standing agreements with local police and fire departments regarding terminal security;
- (19) Security procedures in the event of a loss of electrical power and other emergencies;

- (20) A description of the communications system that is used for maintaining security; and
- (21) A description of the procedures, equipment and operations used for compliance with the requirements of Sections 2437, 2438, 2439, 2440, 2441, 2442 and 2444.
- (c) The MTSO must restrict the distribution, disclosure, and availability of information contained in the Marine Terminal Physical Security Plan to those who have been determined by the terminal operator to have a need-to-know. The information required by subsection (b)(9) of this Section may be maintained at a separate location.
- (d) The Marine Terminal Physical Security Plan shall be reviewed and updated at least annually and whenever a security incident or circumstances warrants changes.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2-24-2003; operative 2-24-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2437. Requirements for Identification of Terminal Employees, Contractors and Visitors to the Terminal.

- (a) All persons entering or leaving a terminal must possess and show a valid identification card or document as prescribed in subsection (b) of this Section to gain access to the terminal. All passengers in vehicles must have valid identification. Identification must be presented to security personnel or government agents upon request. In the event that an individual seeking access to the terminal does not have an identification card that meets the requirements of subsection (b) of this section, an alternative means of identification as prescribed in subsection (b)(13) of Section 2436, must be used.
- (b) Valid identification cards or documents must be tamper resistant and at a minimum include the holders name and a recent photograph of the holder. Any of the following may constitute a valid form of identification:
  - (1) Employer issued employee identification cards;
  - (2) Identification card issued by a government agency;
  - (3) State issued drivers license;
  - (4) Pacific Maritime Association card;
  - (5) Labor Organization identity card; or
  - (6) Passport.
- (c) Security personnel or competent authority shall verify that identification documents and applicable licenses or credentials match the person presenting them. Persons arriving by motorcycle shall be required to remove helmets to assist in identification.
- (d) Security personnel shall randomly verify the identity and identification of persons encountered during roving patrols.
- (e) The MTSO shall develop a verification process as prescribed in subsection (b)(14) of Section 2436, to ensure that all persons requiring access to the terminal have valid business on the terminal. Vendors, contractors, truck drivers and visitors arrivals shall be scheduled in advance. If their arrival is not prearranged, entry shall be prohibited until their need to enter is verified.
- (f) The MTSO shall require contractors and vendors who require access to the terminal or vessels at the terminal, to provide the terminal with a current pre–authorized list of persons requiring access. This requirement does not preclude such persons from having valid identification.
- (g) Vessel's crew members, agents, contractors and vendors on board vessels moored at terminal, shall not be permitted to exit or enter the terminal unless their names are provided and verified in advance.
- (h) The terminal shall have a process to account for all persons within the terminal at any given time.
- (i) All persons requiring access to the terminal shall be subject to search before being permitted to proceed beyond a terminal's access points. Signs shall be posted at access points being utilized to advise persons of this requirement.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2438. Requirements for Access Control.

(a) Gates.

All entry gates shall be locked and secured or guarded at all times or shall have an effective entry detection alert system.

(b) Restricted Areas.

The terminal shall establish and post restricted areas within the terminal to control unauthorized access to critical operating areas such as storage tanks, hazardous materials storage areas, communications and control centers.

(c) Vehicle Control.

Vehicle access controls shall, at a minimum, include the following:

- (1) Parking within the terminal shall be restricted to only those designated spaces indicated in the Marine Terminal Physical Security Plan.
- (2) Vehicle entry and exit routes on the terminal shall be clearly marked.
- (3) All vehicles entering or leaving the terminals shall be subject to search by terminal security personnel. Signs shall be posted to advise persons of this requirement.
- (4) Terminals shall have procedures for controlling vehicle access and parking.
  - (d) Deliveries.
- (1) All packages entering or leaving the terminals are subject to search by terminal security personnel. Delivery orders shall be verified prior to being allowed access to restricted areas. Signs shall be posted at each access point being utilized by the terminal to advise persons of this requirement.
- (2) Bills of lading and shipping documents for cargo and stores deliveries shall be checked for accuracy and cargo and stores should be adequately described on documentation, including piece count if applicable.
  - (e) Security Patrols.
- (1) Designated personnel shall conduct roving safety and security patrols when the terminal is manned at random intervals not exceeding four (4) hours.
- (2) Security patrols shall, at a minimum, cover restricted areas, main power supply switch gear, lighting controls, perimeter access points, vehicle parking areas, communications and operations control centers and waterside access areas.
- (3) Designated personnel must be able to respond immediately to a security signal in accordance with established procedures in the security plan.
- (4) Records of unusual occurrences encountered during security patrols shall be maintained in a log. Such records shall be maintained for a period of three years. Records must be available for inspection by the Division.
  - (f) Tank Vessels, Barges and other Vessels Moored at the Terminal.
- (1) Vessel's crewmembers shall depart or arrive as prescribed in subsection (b)(1)(D) of Section 2436.
- (2) Arrival and departure routes for vessel's crewmembers must be posted or visually indicated to avoid their access to restricted areas within the terminal.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2439. Key Control Systems and Locking Devices.

(1) Locks, locking devices, and key control systems shall be inspected by the MTSO regularly and malfunctioning equipment repaired or replaced.

- (2) Chains used in conjunction with locks shall be permanently attached to fence posts or gates. Locks shall be of case hardened construction
- (3) Access to keys including duplicate keys shall be restricted to those terminal personnel as determined by the MTSO.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2440. Perimeter Fencing or Barriers.

- (a) Perimeter fences and other barriers shall be located and constructed so as to prevent the introduction of persons, dangerous substances or devices, and shall be of sufficient height and durability to deter unauthorized passage.
- (b) Fencing shall have barbed or razor wire tops and be constructed of 9 gauge or heavier wire and shall be no less than 8 feet or sufficient height and durability to deter unauthorized passage. The bottom of the fence shall be within 2 inches of the ground.
- (c) Areas adjacent to fences and barriers shall be cleared of vegetation and debris that could be used to breach them.

NOTE: Authority: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2441. Lighting.

- (a) Security lighting shall provide a minimum illumination standard of one foot candle at one meter above the ground. Security lighting shall, at a minimum, illuminate access points to the terminal, the waterfront and dock areas
- (b) Lighting control and switches shall be protected to prevent unauthorized access or tampering.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2-24-2003; operative 2-24-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2442. Warning Systems, Signals and Communications.

(a) Warning Systems or Signals.

The terminal shall have a signal or system for warning terminal personnel of a security breach or incident.

(b) Communications.

In addition to the requirements of 2 CCR §2370, the terminal shall provide a means of communication for vessel's crews to contact terminal personnel

NOTE: Authority: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

#### § 2443. Video and Electronic Surveillance.

The MTSO shall determine whether or where video or other electronic surveillance and detection systems can be used to augment or replace, as appropriate, the following:

- (a) Detection and warning of breaches of security at perimeter fences and barriers:
  - (b) Roving security patrols;
  - (c) Control of entry points to the terminal; and
  - (d) Surveillance of waterfront areas.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

## § 2444. Terminal Security Training and Security Awareness.

- (a) The MTSO shall develop a security training program for terminal security personnel and a security awareness program for all terminal employees.
- (b) The training program shall include initial and periodic refresher training.
- (c) Terminal security personnel shall complete security training programs established by the MTSO.
- (d) All terminal employees, contractors, vendors and visitors to the terminal shall undergo security training or security awareness training as deemed appropriate by the MTSO. The MTSO shall determine each individual's training requirements from those prescribed in subsection (e) of this Section.
- (e) The security training program shall, at a minimum, include all of the provisions of Section 2433, Section 2436 and the following elements:
- (1) The terminal's policies, practices and procedures for implementing the security program;
  - (2) Coordination with local law enforcement agencies;
- (3) Coordination with federal, state and other local agencies having jurisdiction;
- (4) Procedures and duties for security personnel when a security signal is received:
- (5) Procedures and duties of terminal employees when a security signal is received;
- (6) Procedures for notifying all terminal personnel and vessel's crew when increased security threat levels are imposed by the U.S. Coast Guard Captain of the Port;
- (7) Procedures and arrangements for elevating security in compliance with the U.S. Coast Guard Captain of the Port's directives;
- (8) Procedures, actions and reporting of incidents involving breaches of security;
- (9) Procedures for notifying the National Response Center and local agencies having jurisdiction;
  - (10) Communications, warning systems and signals operations;
- (11) Terminal security drills and exercises which must include periodic drills for implementing elevated security levels;
- (12) Awareness training for terminal employees to ensure that they have working knowledge of the terminal's security and emergency plans and procedures; and
- (13) Awareness training for contractors, vendors and visitors to the terminal.
- (f) Security training must emphasize vigilance and security awareness of all terminal employees.
- (g) The training program shall be reviewed at least annually. The program should be updated to include lessons learned from any breach of security occurrences.
- (h) Security drills and exercises may be either specific to the marine terminal or as part of a cooperative program with vessel, port or local agencies' security plans. Drills and exercises must be conducted at intervals not exceeding twelve (12) months.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.

#### HISTORY

 New section filed 2-24-2003; operative 2-24-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

## § 2445. Marine Terminal Physical Security Plan: Approval Procedure.

- (a) The terminal operator must ensure completion of a Marine Terminal Physical Security Plan and notify the Division Chief of its completion in writing, within 90 days of the effective date of these regulations.
- (b) After the initial 90-day compliance period, the Division staff shall conduct an on-site inspection of the terminal's security arrangements to determine if the Marine Terminal Physical Security Plan meets the requirements of these regulations.

- (c) If the Marine Terminal Physical Security Plan meets the requirements of these regulations, the Division Chief shall approve the plan, in writing, within 30 days of the on–site inspection.
- (d) If the Marine Terminal Physical Security Plan does not meet the requirements of these regulations, the Division Chief shall notify the terminal operator, in writing, of any deficiencies within 30 days of the onsite inspection. Terminal operators shall correct any deficiencies within 30 days or a period agreed upon by the terminal operator and the Division Chief. When corrections have been made, the terminal operator shall notify the Division.
- (e) Upon receipt of such notification, the Division Chief shall, within 30 days, inspect and approve or disapprove the Marine Terminal Physical Security Plan as appropriate.
- (f) Terminal operators shall notify the Division Chief, of any proposed amendments to an approved Marine Terminal Physical Security Plan. Any such proposed amendments shall be communicated to the Division Chief for approval at least 30 days prior to the date that changes are to be adopted. The Division Chief shall approve or disapprove proposed amendments, in writing, within 30 days of receipt as set forth in subsections (c) and (d) of this section.
- (g)(1) Any information or documents relating to security at any marine terminal, where the information or document is identified by the terminal operator as confidential or as containing proprietary information, shall be treated as confidential information by the State Lands Commission and its Staff.
- (2) For purposes of subsection (g)(1), a document shall be considered identified as confidential or as containing proprietary information only if the document is designated as confidential or as containing proprietary information in writing either on the document so identified or in an accompanying document signed by the terminal operator.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code; Sections 6254.15 and 15376, Government Code.

#### HISTORY

1. New section filed 2–24–2003; operative 2–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

## Article 5.3. Marine Terminal Personnel Training and Certification

#### § 2540. Purpose, Applicability and Date of Implementation.

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 5.3, of the California Code of Regulations is to establish onshore and offshore marine terminal personnel oil—handling training and certification requirements which, when followed, will:
- (1) Provide improved protection of California waters and natural resources by preventing oil spills caused by human factors;
- (2) Ensure that marine terminal personnel involved in oil-handling operations are adequately trained and have demonstrated competency; and
- (3) Establish certification that personnel are in compliance with training requirements.
  - (b) The provisions of this article shall not apply to:
  - (1) Operations conducted at offshore drilling and production facilities.
- (2) Tank cleaning operations which begin after the removal of cargo or fuel from any tank vessel or barge.
- (c) Unless otherwise specified in this article, all of the provisions of this article become effective 30 days after they have been filed with the Secretary of State.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New article 5.3 and section filed 3–7–94; operative 4–6–94 (Register 94, No. 10).

#### § 2541. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

- (a) "Barge" means any vessel that carries oil in commercial quantities as cargo, but is not equipped with a means of self-propulsion.
- (b) "Certification" means the documentation that a terminal employee has met all of the requirements of an oil spill prevention training and job competency program that meets the requirements of this article.
- (c) "Division" means the Marine Facilities Division of the California State Lands Commission.
- (d) "Division Chief" means the Chief of the Marine Facilities Division or any employee of the Division authorized by the Chief to act on his behalf.
- (e) "Human factors" means human conditions, such as inadequate knowledge or fatigue, which can lead to operator error or poor judgement.
- (f) "Human factor risks" means risks of causing an oil spill due to the effects of human factors on competency and judgement.
- (g) "Indirect operations" means involvement in on-site activities, such as new construction, in a capacity that indirectly involves the risk of an oil spill to waters of the state due to potential impacts to nearby oil-handling operations (e.g., operating digging equipment next to an active oil transfer pipeline).
- (h) "Maintenance" means direct involvement in maintaining and repairing the equipment used for the transfer, storage, handling, or monitoring of oil at a marine terminal in a capacity that involves the risk of an oil spill to marine waters.
- (n) "Onshore marine terminal" means any marine terminal at which tank vessels or barges are made fast to land structures or substantially land structures.
- (o) "On-the-job training" means learning procedures and equipment use through observation of experienced and competent personnel, and supervised hands-on practice.
- (p) "Operations" means direct involvement in the transfer, storage, handling, or monitoring of oil at a terminal in a capacity that involves the risk of an oil spill to waters of the state. This functional group includes but is not limited to the Terminal person in charge, storage tank operators, pipeline operators, and oil transfer monitors.
- (q) "Operator" when used in connection with vessels, marine terminals, pipelines, or facilities, means any person or entity which owns, has an ownership interest in, charters, leases, rents, operates, participates in the operation of or uses that vessel, terminal, pipeline, or facility. "Operator" does not include any entity which owns the land underlying the terminal or the terminal itself, where the entity is not involved in the operations of the terminal.
- (r) "Personnel" means individuals employed by, or under contract with, a terminal.
- (s) "Spill" or "discharge" means any release of oil into marine waters which is not authorized by any federal, state, or local government entity.
- (t) "Supervisory" means involvement in directly supervising any transfer, storage, handling, or monitoring of oil at a marine terminal by implementing operations policies and procedures that involve risk of an oil spill to marine waters.
- (u) "Tank facility" means any one or combination of above ground storage tanks, including any piping which is integral to the tank, which contains crude oil or its fractions and which is used by a single business entity at a single location or site. A pipe is integrally related to an above ground storage tank if the pipe is connected to the tank and meets any of the following:
  - (1) The pipe is within the dike or containment area;
- (2) The pipe is connected to the first flange or valve after the piping exists the containment area; or
  - (3) The pipe is connected to the first flange or valve on the exterior of

- (i) "Management" means the first line supervision with direct involvement in managing the transfer, storage, handling, or monitoring of oil at a marine terminal by administering operations policies and procedures that involve the risk of an oil spill to marine waters.
- (j) "Marine terminal" means a facility other than a vessel, located on or adjacent to marine waters in California, used for transferring oil to or from tank vessels or barges. The term references all parts of the facility including, but not limited to, structures, equipment and appurtenances thereto used or capable of being used to transfer oil to or from tank vessels or barges. For the purpose of these regulations, a marine terminal includes all piping not integrally connected to a tank facility.
- (k) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through the use of terminal personnel and best achievable technology. In determining what is the maximum extent practicable, the Division shall consider, at a minimum, the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.
- (1) "Offshore marine terminal" means any marine terminal at which tank vessels or barges are made fast to a buoy or buoys.
- (m) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

the tank, if state of federal law does not require a containment area.

- (v) "Tank vessel" or "tanker" means any self-propelled, water borne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.
  - (w) "Terminal" means marine terminal.
- (x) "Terminal person in charge" or "TPIC" means an individual designated by the terminal operator as the person in charge of a particular oil transfer operation at a particular terminal.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).
- 2. Change without regulatory effect amending subsections (c) and (d) filed 12–18–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 51).

#### § 2542. Training Requirements.

- (a) Each onshore and offshore terminal shall develop and implement oil spill prevention training for supervisory, operations, maintenance, management, and indirect operations personnel identified pursuant to subsection (c) of this section. Training shall be designed to promote job competency and environmental awareness for the purpose of preventing oil spills. Non–English–speaking personnel subject to the terminal's training requirements shall be trained in a manner that allows comprehension by such personnel.
- (b) Oil spill prevention training programs must be approved by the Division.
- (c) The terminal operator shall identify, in writing, the specific position titles which the terminal has identified to be subject to its oil spill prevention training requirements. In making this determination, the terminal shall evaluate the functions of terminal personnel positions using the definitions of "Supervisory," "Operations," "Maintenance," "Management," and "Indirect Operations" as defined in section 2541. For cases

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where certain job titles associated with maintenance and indirect operations can not be identified in advance, the terminal operator shall identify the types of job orders or work sites which may involve the need for maintenance or indirect operations oil spill prevention training.

- (d) The terminal operator shall identify, in writing, the specific initial classroom and on-the-job oil spill prevention training requirements for each position, including minimum hours, that are appropriate for each position given the terminal's training needs and human factor risks.
- (e) Requirements for training of operations and supervisory personnel shall focus on building personnel competency in operating procedures and spill prevention systems specific to the terminal. Oil spill prevention training requirements shall incorporate, at a minimum, the following training topics:
- (1) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the terminal;
- (2) Operating procedures and checklists specific to trainee's job function;
- (3) Problem assessment including recognition of human factor risks and how they can be minimized;
  - (4) Awareness of preventative maintenance procedures;
  - (5) Awareness of local environmental sensitivity and oil spill impacts;
  - (6) Major components of the terminal's operations manual;
- (7) Major components of the terminal's oil spill contingency plan including notification procedures for oil spills;
- (8) Decision—making for abnormal operating events and emergencies, including emergency spill prevention and safe shut down conditions, responsibilities and procedures;
  - (9) Routine and emergency communications procedures;
- (10) Overview of applicable oil spill prevention and response laws and regulations; and
  - (11) Drug and alcohol use awareness.
- (f) Requirements for initial oil spill prevention training of management personnel shall incorporate, at a minimum, the following training topics:
- (1) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the terminal;
  - (2) Management role in operations and oil spill prevention;
  - (3) Recognition of human factor risks and how they can be minimized;
  - (4) Awareness of local environmental sensitivity and oil spill impacts;
  - (5) Major components of the terminal's operations manual;
- (6) Major components of the terminal's oil spill contingency plan including notification procedures for oil spills and incident command systems;
- (7) Decision-making for abnormal operating events and emergencies, including emergency spill prevention and safe shut down conditions, responsibilities and procedures;
- (8) Overview of applicable oil spill prevention and response laws and regulations; and
  - (9) Drug and alcohol use awareness.
- (g) Requirements for initial oil spill prevention training of maintenance or indirect operations personnel shall incorporate, at a minimum, the following training topics:
- (1) Overview of equipment, operations and hazards at specific maintenance and indirect operations work site(s) within the facility;
  - (2) Awareness of local environmental sensitivity and oil spill impacts;
  - (3) Notification procedures for oil spills; and
  - (4) For terminal employees, drug and alcohol use awareness.
- (h) Training topics identified in subsections (e) to (g) of this section do not prescribe fixed subject titles for class outlines or training organization. Terminals may combine or integrate these topics, as appropriate, but must ensure that information on each topic is presented in the applicable personnel training program.
- (i) The terminal operator shall identify, in writing, the specific oil spill prevention continuing education requirements for each affected position, including minimum hours, that are appropriate given the terminal's train-

ing needs and human factor risks. Ongoing training shall occur at least annually and, at a minimum, address:

- (1) Any changes in the topics identified in subsections (e) to (g) of this section.
- (2) Refresher awareness training on environmental sensitivity and oil spill impacts;
- (3) Review and analysis of oil spills which have occurred during the past year;
  - (4) Refresher training on oil spill prevention procedures; and
- (5) For supervisory, operations, and management personnel, a practice exercise of the terminal's procedures for preventing a spill during a particular abnormal operations event.
- (j) Terminal operators are encouraged to combine existing training programs required under federal Process Safety Management requirements (29 CFR 1910), Coast Guard Persons in charge requirements (33 CFR 154.710), and other federal and state training requirements in order to meet the above oil spill prevention training requirements.
- (k) Existing personnel that have entered their current positions prior to these regulations becoming effective can be regarded as having met the terminal's initial oil spill prevention training requirements if the terminal operator has documented that those personnel have received the required training in initial oil spill prevention within the previous five years. Existing personnel shall be recertified at least once every three years in accordance with subsection (g) of section 2545.
- (*l*) Terminal operators shall develop follow up remedial training for personnel clearly responsible for causing an oil spill while functioning in their position, unless such personnel no longer occupy a position identified under subsection (c).
- (m) Contractors hired by the terminal operator to perform supervisory, operations, maintenance, management, or indirect operations functions, as identified by the terminal under subsection (c) of this section, are considered "personnel" for the purposes of these regulations, and shall be subject to the same oil spill prevention training requirements as terminal employees. The terminal operator is responsible to validate that such contractors have met the terminal's oil spill prevention training requirements before they perform a supervisory, operations, maintenance, management, or indirect operations function.
- (n) Terminal operators shall develop minimum training and experience qualifications for trainers who will demonstrate terminal specific procedures, equipment use, supervise practice sessions, and provide other on–the–job training to new personnel.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

#### § 2543. Training Materials.

Terminal operators shall develop and maintain written oil spill prevention training materials, such as training manuals, checklists and curricula.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

#### § 2544. Certification Program.

- (a) Each onshore and offshore terminal operator shall develop and implement a program to certify that supervisory and operations personnel identified pursuant to subsection (c) of section 2542 of these regulations, have met the terminal's oil spill prevention training program requirements, and are competent to perform the functions associated with their positions. The certification program shall be designed, to the maximum extent practicable, to ensure job competency and environmental awareness for the purpose of preventing oil spills.
- (b) Certification programs must meet the minimum criteria set forth in section 2545 of these regulations.

(c) All certification programs for supervisory and operations personnel must be approved by the Division as required by section 2546 of these regulations.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

#### § 2545. Minimum Criteria for Certification.

- (a) The terminal oil spill prevention certification program shall address all supervisory and operations personnel identified pursuant to subsection (c) of section 2542.
- (b) The terminal operator shall develop and maintain written certification procedures, including:
  - (1) Minimum competency requirements to achieve certification;
- (2) The process to develop and test competency in supervisory and operations personnel; and
- (3) The process of issuing and tracking certificates, including replacement of lost certificates.
- (c) The terminal operator shall maintain a written certificate or other record for supervisory and operations personnel which have met the terminal's certification requirements. This record shall document:
  - (1) The certified individual's name and position;
  - (2) Types and hours of training completed;
  - (3) Name of trainer;
  - (4) Results of performance tests and evaluations;
  - (5) Signatures of the trainee and trainer; and
  - (6) Date of certification.
- (d) Copies of certification records shall be kept at the terminal or in a location such as an office, so that they are readily accessible to Division staff, for at least five years from the date of certification.
- (e) A terminal's certification program shall incorporate methods to evaluate and confirm job competency, including:
- (1) A written examination, or oral examination documented in writing, which tests general knowledge about training topics identified under subsection (e) of section 2542, with an appropriate minimum passing score established by the terminal operator.
- (2) A practical evaluation of understanding and performance of routine and emergency operations specific to position's job function, including observation of performance of each oil handling, transfer, storage, and monitoring duties assigned to a position prior to unsupervised performance of those duties.
- (f) The terminal's program shall only provide for certification of an individual who has:
- (1) Met the terminal's oil spill prevention initial training requirements relevant to the individual's position, as developed pursuant to subsection (d) of section 2542; and
- (2) Passed a competency evaluation developed under subsection (e) of this section.
  - (g) Recertification shall occur at least once every three years based on:
  - (1) Successful completion of annual refresher training; and
- (2) Satisfactory performance in a reevaluation of competency as developed under subsection (e) of this section.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

#### § 2546. Program Approval.

- (a) Terminal operators shall develop or modify their training and certification program to meet the requirements of Article 5.3, begin implementing the program, and, if necessary, update the description of this program within twelve months of the effective date of these regulations.
- (b) Within eighteen months of the effective date of these regulations the terminal operator shall have conducted certification procedures, as developed pursuant to subsection (b) of section 2545, for all existing personnel that are subject to the terminal's certification requirements and

have entered their current position prior to these regulations becoming effective.

- (c) The Division shall review a terminal's training and certification program after the date determined by subsection (a) of this section. This review shall be accomplished by a general on–site inspection by the Division through evaluation of the terminal's training materials, testing and certification records, and consultation with terminal personnel.
- (d) The Division shall notify terminal operators regarding approval status within 30 calendar days of completing inspections under subsection (c) of this section.
- (e) Terminal operators who do not receive approval will have 90 days to address deficiencies in their training and certification program, with options for time extension at the discretion of the Division. For those personnel that were trained or certified after the dates established by subsection (a) of this section but prior to training program disapproval, retraining or recertification of such personnel due to changes required by the Division's approval process may be postponed until the next retraining or recertification cycle as established by the terminal pursuant to this Article
- (f) Training and certification program approval is valid for five years. Significant changes to the terminal's program must be documented through an update of the terminal's training and certification program and submitted to the Division for approval. Minor upgrades in training programs, such as expansion of training hours or updates to training materials, are not required to be submitted. The Division may perform announced and unannounced inspections at terminals to verify compliance.
- (g) A training and certification program shall be approved if, in addition to meeting the requirements of sections 2544 and 2545 it demonstrates that, when implemented, it can, to the maximum extent practicable:
- (1) Provide protection from human factor oil spill risks identified in the risk analysis required by the terminal's oil spill contingency plan;
- (2) Minimize the likelihood that terminal oil spills will occur and minimize the size and impacts of those terminal oil spills which do occur;
- (3) Provide effective oil spill prevention training to supervisory, operations, maintenance, management, and indirect operations personnel;
  - (4) Ensure proper evaluation of job competency; and
- (5) Provide an effective system to clearly document and track personnel training and certification.
- (h) The Division may approve a training and certification program with an expedited review as set out in this section if that program has been approved by a federal agency which the Division has deemed to apply approval criteria which equal or exceed those of the Division.
- (i) If the training and certification program receives approval, the terminal operator shall receive a letter of approval from the Division, describing the terms of approval, including expiration dates pursuant to subsection (f) of this section.
- (j) If approval is denied or revoked, the terminal operator shall receive, in writing, an explanation of the factors for disapproval and a list of deficiencies. The terminal operator may be subject to enforcement actions prescribed under sections 8670.57, 8670.58 8670.59 and 8670.61 of the Government Code.
- (k) Approval of a training and certification program by the Division does not constitute an express assurance regarding the adequacy of the program nor constitute a defense to liability imposed under state law.
- (1) The Division may review a program following any spill at the terminal.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8670.57, 8670.58, 8670.59 and 8670.61, Government Code; and Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

#### § 2547. Inspections.

(a) The Division may verify compliance with this article by announced and unannounced inspections in accordance with section 8757 of the

Public Resources Code and section 2320 of Title 2, Division 3, Chapter 1, Article 5, of the California Code of Regulations.

- (b) During inspections, Division staff may require terminal operators to demonstrate proof of training and certification of supervisory and operations personnel.
- (c) The Division shall provide a copy of an inspection report to the terminal operator within thirty calendar days from the inspection date.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Section 8670.2, Government Code; and Sections 8751, 8755, 8756 and 8757. Public Resources Code.

#### HISTORY

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

#### § 2548. Modifications or Alternatives.

- (a) Petitions for Modifications or Alternatives.
- (1) Any person subject to these regulations may submit a petition to the Division Chief for modifications or alternatives to the requirements of Article 5.3.
- (2) All petitions for modifications or alternatives must be submitted in writing. A petition may be in any form, but it must contain all data and information necessary to evaluate its merits.
  - (b) Response to Petitions.

The Division Chief shall respond in writing to any petition for modifications or alternatives within 30 days of receipt of the petition.

- (c) Approval of Modifications or Alternatives.
- (1) The Division Chief may approve any proposed modifications or alternatives to the requirements of Article 5.3 if he or she determines that the proposed modifications or alternatives will fulfill the purpose of these regulations as outlined in subsection (a) of section 2540 of this article.
- (2) If the Division Chief approves any proposed modification or alternatives under this section, a letter of approval shall be issued to the petitioner setting forth the findings upon which the approval is based, and a copy of that letter shall be maintained with the terminal's training manual or training records required by section 2543 of these regulations.
- (3) The Division Chief may withdraw the letter of approval of any modifications or alternative requirements at any time if he or she finds that the person or persons subject to these regulations have not regularly and consistently complied with the approved modified or alternative requirements.
- (4) Withdrawal of a letter of approval under this section shall be effective upon receipt by the petitioner of written notification of the withdrawal from the Division Chief.

NOTE: Authority cited: Sections 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 3-7-94; operative 4-6-94 (Register 94, No. 10).

## Article 5.4. Structural Requirements for Vapor Control Systems at Marine Terminals

#### § 2550. Purpose, Applicability and Date of Implementation.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

- 1. New article 5.4 (sections 2550–2556) and section filed 9–10–97; operative 10-10-97 (Register 97, No. 37).
- Repealer of article 5.4 (sections 2550–2556) and section filed 2–21–2006; operative 3–23–2006 (Register 2006, No. 8).

## § 2551. Review of Engineering Practice, Structural Calculations, Drawings and Petitions.

NOTE: Authority cited: Sections 8751, 8755, 8756, 8757 and 8758, Public Resources Code. Reference: Sections 8751, 8755, 8756, 8757 and 8758, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.

#### HISTORY

- 1. New section filed 9-10-97; operative 10-10-97 (Register 97, No. 37).
- 2. Repealer filed 2–21–2006; operative 3–23–2006 (Register 2006, No. 8).

#### § 2552. Definitions.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8750, 8751, 8755, 8756 and 8757, Public Resources Code.

- 1. New section filed 9-10-97; operative 10-10-97 (Register 97, No. 37).
- 2. Repealer filed 2-21-2006; operative 3-23-2006 (Register 2006, No. 8).

## § 2553. Structures Supporting NVCS or New VCS Equipment to Be Installed as Part of a Marine Terminal but Not on the Wharf or Pier.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.

#### HISTORY

- 1. New section filed 9–10–97; operative 10–10–97 (Register 97, No. 37).
- 2. Repealer filed 2-21-2006; operative 3-23-2006 (Register 2006, No. 8).

## § 2554. Structures Supporting New VCS Equipment to Be Installed on Areas of Existing Wharves or Piers Overhanging the Water or Wetlands.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.

#### HISTORY

- 1. New section filed 9–10–97; operative 10–10–97 (Register 97, No. 37).
- Change without regulatory effect amending subsection (b)(4) filed 12–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 52)
- 3. Repealer filed 2-21-2006; operative 3-23-2006 (Register 2006, No. 8).

## § 2555. Inspection and Reassessment of EVCS Structural Installations.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.

#### HISTORY

- 1. New section filed 9-10-97; operative 10-10-97 (Register 97, No. 37).
- Change without regulatory effect amending subsection (a)(1) filed 12–26–2001
   pursuant to section 100, title 1, California Code of Regulations (Register 2001,
   No. 52)
- 3. Repealer filed 2-21-2006; operative 3-23-2006 (Register 2006, No. 8).

#### § 2556. Alternatives.

NOTE: Authority cited: Sections 8751, 8755 and 8756, Public Resources Code. Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.

#### HISTORY

- 1. New section filed 9–10–97; operative 10–10–97 (Register 97, No. 37).
- 2. Repealer filed 2-21-2006; operative 3-23-2006 (Register 2006, No. 8).

#### Article 5.5. Marine Terminal Oil Pipelines

#### § 2560. Purpose, Applicability, and Date of Implementation.

- (a) Unless otherwise specified in these regulations, all of the provisions of these regulations become effective on September 1, 1998.
- (b) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 5.5 of the California Code of Regulations is to provide the best achievable protection of the public health and safety and of the environment by using the best achievable technology in providing for marine terminal oil pipeline integrity.
- (c) The provisions of Article 5.5 apply only to pipelines that are within or a part of marine terminals and are used to transfer oil either:
  - (1) Within the marine terminal; or
  - (2) To or from tank vessels or barges.
  - (d) The provisions of Article 5.5 do not apply to any pipelines:
- (1) That are within or part of marine terminals and are isolated and disconnected from any pipeline or manifold which can be used to transfer oil within the marine terminal or to and from tank vessels and barges; or
- (2) That are used exclusively to transport oil that are subject to the jurisdiction of the State Fire Marshal; or

(3) That are part of a tank vessel or barge.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New article 5.5 (sections 2560–2571) and section filed 8–12–97; operative 9–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

#### § 2561. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this Article:

- (a) "Class I pipeline" means any pipeline or portion thereof which does not meet the criteria specified for a Class II pipeline.
  - (b)(1) "Class II pipeline" means either of the following:
- (A) Any pipeline or portion thereof which has experienced two or more reportable leaks due to corrosion or defect in the prior three years. Leaks experienced during an SLPT shall not be counted as a leak for the purpose of classification of pipelines as Class II pipelines. For purposes of this definition, a leak which is taceable to an external force, but for which corrosion is partly responsible, shall be deemed caused by corrosion.
- (B) Any pipeline or pipeline system a part of which extends over marine waters or wetlands and does not have any form of permanently installed effective containment located between the pipeline and the water surface or wetland over its entire exposed length over the water or wetlands.
- (2) Each pipeline which has been classified as a Class II pipeline under subsection (b)(1)(A) of this section shall retain its classification as a Class II pipeline, until five years pass without a reportable leak due to corrosion or defect on that pipeline. After five years pass without a reportable leak, such Class II pipeline may be reclassified as a Class I pipeline following its next scheduled SLPT required by 2 CCR Section 2564(c)(3).
- (3) For the purpose of classification of pipelines as Class II pipelines under subsection (b)(1)(A) of this section, all reportable leaks that have occurred due to corrosion or defect in the three years prior to the effective date of these regulations shall be taken into account in making that determination.
- (4) For the purpose of reclassification of Class II pipelines as Class I pipelines under subsection (b)(2) of this section, any period of time without having a reportable leak shall commence from a date five years prior to the effective date of this regulation.
- (c) "Component" means any part of a pipeline or pipeline system which may be subjected to pump pressure or liquid gravitational pressure including, but not limited to, pipe, valves, elbows, tees, flanges, and closures.
  - (d) "Defect" means manufacturing or construction defects.
- (e) "Division" means the Marine Facilities Division of the California State Lands Commission.
- (f) "Division Chief" means the Chief of the Marine Facilities Division or any employee of the Division authorized by the Chief to act on his behalf
- (g) "Leak" or "reportable leak" means every unintentional liquid leak. A "reportable leak" does not include an unintentional leak from a gasket, gland or sealing material at a pump, valve, elbow, tee, flange or closure, which has been stopped by immediate tightening of bolts or any similar prompt corrective action.
- (h) "Marine terminal" means a facility, other than a vessel, located on or adjacent to marine waters in California and used for transferring oil to or from tank vessels or barges. The term references all parts of the facility, but not limited to, structures, equipment and appurtenances thereto used or capable of being used to transfer oil to or from tank vessels or barges. For the purpose of this article, a marine terminal includes all piping not integrally connected to a tank facility.
- (i) "Maximum allowable operating pressure" or "MAOP" means the highest safe operating pressure at any point in a pipeline system during normal flow or static conditions.

- (j) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.
- (k) "Operator" when used in connection with marine terminals, pipelines, or facilities, means any person or entity which owns, has an ownership interest in, leases, rents, operates, participates in the operation of or uses that terminal, pipeline, or facility. "Operator" does not include any entity which owns the land underlying the terminal or the terminal itself, where the entity is not involved in the operations of the terminal.
- (*l*) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.
- (m) "Pipe" or "line pipe" means a tube, usually cylindrical, through which oil flows from one point to another.
- (n) "Pipeline or pipeline system" means a marine terminal pipeline through which oil moves within a marine terminal or between a marine terminal and a tank vessel or barge, including, but not limited to, line pipe, valves, other appurtenances connected to line pipe, fabricated assemblies associated with pumping units, and delivery stations and fabricated assemblies therein.
- (o) "Standard Cathodic Protection System" or "SCPS" means an external corrosion control system used on underground or submerged metallic piping systems that is in conformance with and meets the criteria of the National Association of Corrosion Engineers (NACE) Standard RP0169–2002, Item No. 21001, reaffirmed 2002–04–11; published by NACE, 1440 South Creek Drive, Houston, Texas 77084–4906.
- (p) "State Fire Marshal" means the person, and any representative of the person, appointed by the Governor pursuant to Section 13101 of the Health and Safety Code.
- (q) "Static Liquid Pressure Test" or "SLPT" means the application of internal pressure above the normal or maximum operating pressure to a pipeline or a segment of pipeline, under no–flow conditions, for a fixed period of time, utilizing a liquid test medium. For the purpose of these regulations, the liquid test medium used may be either water or a liquid hydrocarbon with a flash point greater than 140° Fahrenheit. In circumstances where any other liquid medium is to be used for a SLPT, the operator shall petition the Division Chief using the procedures outlined in 2 CCR Section 2564(h).
- (r) "Tank facility" means any one or combination of above ground storage tanks, including any piping which is integral to the tank, which contains crude oil or its fractions and which is used by a single business entity at a single location or site. A pipe is integrally related to an above ground storage tank if the pipe is connected to the tank and meets any of the following:
  - (1) The pipe is within the dike or containment area;
- (2) The pipe is connected to the first flange or valve after the piping exits the containment area; or
- (3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.
- (s) "Transfer pipeline" or "transfer pipeline system" means a pipeline that is within or a part of a marine terminal. A transfer pipeline does not include a pipeline that is subject to the jurisdiction of the State Fire Marshal.
- (t) "Wetlands" means streams, channels, lakes, reservoirs, bays, estuaries, lagoons, marshes, and the lands underlying and adjoining such waters, whether permanently or intermittently submerged, to the extent that such waters support and contain significant fish, wildlife, recreational, aesthetic, or scientific resources.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8750, 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

HISTORY

1. New section filed 8–12–97; operative 9–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

 Amendment of subsection (o) filed 2–2–2007; operative 3–4–2007 (Register 2007, No. 5).

#### § 2562. Notification and Reporting of Pipeline Incidents.

- (a) The operator of any marine terminal at which there occurs a rupture, explosion or fire involving a transfer pipeline, including, but not limited to, a transfer pipeline system undergoing testing, shall notify the California Office of Emergency Services of the incident as soon as possible, but in no event later than twenty–four (24) hours after the incident.
- (b) Within 30 days following any pipeline incident specified in subsection (a) of this section, the operator shall forward an incident report to the local area Division field office. The report shall include at a minimum;
  - (1) The date and time of the pipeline incident;
  - (2) The location and identity of the pipeline;
  - (3) The product in the pipeline at the time of the incident;
  - (4) The cause or causes of the incident; and
- (5) Any remedial action taken to restore the integrity of the pipeline. NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8756, 8756 and 8757, Public Resources Code.

#### HISTORY

 New section filed 8-12-97; operative 9-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

#### § 2563. Design, Construction and Maintenance.

- (a) Any repairs, alterations or modifications to existing transfer pipeline systems shall meet the design and construction criteria specified in Subparts C and D of Part 195 of Title 49 of the Code of Federal Regulations as in effect on October 1, 1996.
- (b) Every new transfer pipeline installed after September 1, 1998, shall be designed and constructed in accordance with Subparts C and D of Part 195 of Title 49 of the Code of Federal Regulations as in effect on October 1, 1996.
- (c) Each component of a pipeline which is exposed to the atmosphere shall be coated with material suitable for protecting the component from atmospheric corrosion.
- (d) In addition to the requirements of subsections (a), (b) and (c) of this Section, the design, construction and maintenance of all marine terminal oil pipelines shall conform with the provisions of Divisions 9 and 10 of Title 24, Chapter 31F of the California Code of Regulations.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

- New section filed 8-12-97; operative 9-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
- Amendment of section heading and new subsection (d) filed 2–2–2007; operative 3–4–2007 (Register 2007, No. 5).

#### § 2564. Schedule for Static Liquid Pressure Testing.

- (a)(1) No operator may operate any pipeline or pipeline system governed by this Article unless it has successfully completed an SLPT as specified in Section 2565, in accordance with the schedules prescribed in this section.
- (2) All pipelines that do not have a valid certified SLPT certificate shall conform with and be marked in accordance with the provisions of subsections 12 and 13 of Section 3109F.2, Division 9 of Title 24, Chapter 31F of the California Code of Regulations.
  - (b) This subsection (b) applies only to Class I Pipelines.
- (1) Every newly installed pipeline or pipeline system shall have undergone a complete and successful SLPT prior to being used for any transfer of oil. Subsequent SLPTs shall be conducted at the appropriate intervals prescribed in subsection (b)(3) of this section.
- (2) Every existing pipeline or pipeline system which has any segment relocated or replaced shall undergo a complete and successful SLPT after completion of relocation or replacement and prior to being used for any transfer of oil. Subsequent SLPTs shall be conducted at the appropriate intervals prescribed in subsection (b)(3) of this section. The SLPT requirements of this subsection need not apply to cases where a component other than pipe is being replaced or added to the pipeline system and the manufacturer certifies that either:

- (A) The component was successfully tested with an SLPT at the factory where it was manufactured or at the operator's facility; or
- (B) The component was manufactured under a quality control system that ensures each component is at least equal in strength to a prototype that was successfully tested with an SLPT at the factory.
- (3) Every pipeline or pipeline system shall be subjected to an SLPT within five (5) years of the date of its initial SLPT prescribed in subsection (b)(1) of this section. Subsequent SLPTs shall be carried out in accordance with the following schedule:
- (A) For pipelines that do not have an SCPS and are buried or submerged either partially or wholly, at succeeding intervals not exceeding three year cycles from the date of test carried out under subsection (b)(3) of this section;
- (B) For pipelines that have an SCPS and are buried or submerged either partially or wholly, at succeeding intervals not exceeding five year cycles from the date of test carried out under subsection (b)(3) of this section; and
- (C) For pipelines or segments of pipelines situated entirely above the ground or water, at succeeding intervals not exceeding five year cycles from the date of test carried out under subsection (b)(3) of this section.
  - (c) This subsection (c) applies only to Class II Pipelines.
- (1) Every newly installed pipeline or pipeline system shall undergo a complete and successful SLPT prior to being used for any transfer of oil. Subsequent SLPTs shall be conducted at the appropriate intervals prescribed in subsection (c)(3) of this section.
- (2) Every pipeline or pipeline system which has been classified as a Class II pipeline under subsection (b)(1)(A) of Section 2561, shall undergo a complete and successful SLPT after being classified as a Class II pipeline and prior to being used for any transfer of oil. Subsequent SLPTs shall be conducted at the appropriate intervals prescribed in subsection (c)(3) of this section.
- (3) In addition to the SLPTs required by either subsections (c)(1) or (2) of this section, subsequent SLPTs shall be conducted at the following intervals:
- (A) For pipelines or pipeline systems that do not have an SCPS and are buried or submerged either partially or wholly, at succeeding intervals not exceeding one year cycles from the date of tests conducted under either subsections (c)(1) or (2) of this section, whichever is appropriate.
- (B) For pipelines or pipeline systems that have an SCPS and are buried or submerged either partially or wholly, at intervals not exceeding three year cycles from the date of tests conducted under either subsections (c)(1) or (2) of this section, whichever is appropriate.
- (C) For pipelines or segments of pipelines situated entirely above the ground or water, at succeeding intervals not exceeding three year cycles from the date of test carried out under either subsections (c)(1) or (2) of this section, whichever is appropriate.
- (d) Each operator shall report any pipeline or segment thereof which meets the criteria of Class II pipeline to the local area Division field office within 30 days following the date the pipeline or portion thereof first meets the criteria as a Class II pipeline. Any pipeline determined to meet the criteria as a Class II pipeline which has not been so reported by the operator to the Division shall be deemed to have been a Class II pipeline on the date determined by the Division. The Division may determine that the period during which a Class II pipeline must have no reportable leaks in order to be reclassified as a Class I pipeline under § 2561(b)(2) does not begin until the required notice is given. Any operator failing to submit such notification report as required shall, as in the case of any violation of any provision of this article, be subject to enforcement actions prescribed under §§ 8670.57 through 8670.69.6 of the Government Code.
- (e) Notwithstanding the requirements of subsection (c) of this section and subject to the approval of the Division Chief, an operator may implement an alternative method to assure the integrity of a segment of pipeline classified as Class II. When this alternative method has been implemented to the satisfaction of the Division Chief, the pipeline may be classified as a Class I pipeline.

- (f) Alternative test methods, including, but not limited to, inspection by instrumented internal inspection devices, may be approved by the Division Chief on an individual basis. In approving an alternative to an SLPT, the Division Chief may require that the alternative test be conducted more frequently than the testing schedules specified in subsections (b) and (c) of this section.
- (g) Notwithstanding the testing schedules specified in subsections (b) through (f) of this section, and in the event that the reported test results on a particular pipeline subject to this Article do not provide sufficient information as required by 2 CCR Section 2567(b), to the Division Chief to determine whether the affected pipeline could be the source of a discharge of oil or pose a threat to public health and safety or the environment, the Division Chief may require the terminal operator either:
- (1) To provide any extra information to substantiate that a successful SLPT has been conducted; or
- (2) To undergo an SLPT or any other non-destructive test or inspec-
- (h) An operator may request that the Division Chief authorize the use of a test medium other than water or liquid hydrocarbon with a flash point greater than 140° Fahrenheit. Such request must be submitted in writing at least 10 working days prior to beginning the SLPT. Such an alternative may be authorized where the Division Chief deems that it would provide a reasonably equivalent or better means of testing and that there will be no detriment to the public health, safety and the environment.
- (i) In all cases where a liquid hydrocarbon is used as a test medium, the terminal operator shall provide the Division Chief with the liquid bulk modulus and coefficient of thermal expansion of the test medium at least three working days prior to the test.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 8-12-97; operative 9-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
- Amendment designating former subsection (a) as subsection (a)(1) and new subsections (a)(2) and (i) filed 2-2-2007; operative 3-4-2007 (Register 2007, No. 5).

#### § 2565. Static Liquid Pressure Testing.

- (a) Each transfer pipeline system and mechanical loading arm must not leak when undergoing an SLPT of at least 125 percent of the maximum allowable operating pressure.
- (b) The pressure tests required by this section shall be conducted in accordance with Part 195 of Title 49 of the Code of Federal Regulations as in effect on October 1, 1996, except that an additional four–hour leak test under Section 195.303 of Title 49 of the Code of Federal Regulations as in effect on October 1, 1996, shall not be required.
- (c) A deadweight gauge capable of measuring to one-pound-persquare-inch (psi) increments shall be used during each pressure test. The deadweight gauge shall be calibrated to a standard directly traceable to the National Institute of Standards and Technology at least once every two years and shall have a valid Certificate of Traceability.
- Deadweight pressure readings shall be taken at least once each hour during the test.
- (2) A pressure recording device shall continuously record the pipeline pressure versus time during the test. The pressure recording device shall be calibrated prior to every test.
  - (d) Test Temperature Data.
- (1) Test temperature data shall be recorded as prescribed in the following subsections (d)(1)(A), (B) and (C):
- (A) A temperature recording device shall continuously record the internal test medium temperature versus time during the test. The temperature recording device shall be calibrated prior to every test and have a resolution of plus or minus 0.1 degree Fahrenheit for a water test medium or plus or minus 0.01 degree Fahrenheit for any hydrocarbon test medium. The range of the recording device shall be suitable for anticipated temperatures.

- (B) The ambient air temperature, wind speed, precipitation and cloud cover shall be recorded at the same interval the deadweight pressure readings are taken
- (C) The pipe wall temperature shall be recorded at the same interval the deadweight pressure readings are taken.
- (2) In circumstances where the test temperature data cannot be recorded as required by subsection (d)(1) of this section, temperature measuring devices shall be placed so as to provide representative sample temperatures of test medium, ambient air and pipe wall. Resolution of instruments to measure temperature of pipewall or test medium shall be as specified in subsection (d)(1)(A) of this section. Pipewall temperature measuring probes shall be appropriately located, be firmly attached to the pipewall and insulated so as to minimize influence from ambient temperature and solar radiation.
- (e) Where different sections of a pipeline or pipeline system are located in considerably different environments (e.g., in the open air or below ground or water), the temperature of each segment in each environment shall be monitored separately. For the purposes of pressure compensation calculations due to temperature variations, each segment's temperature in its respective environment shall be used. The total pipeline or pipeline system temperature change shall be determined by adding the temperature change of each segment and prorating the segment's length to the total pipeline length or pipeline system length. Alternatively, each segment in its respective environment may be treated as a separate pipeline under test and the compensated pressure variations due to each segment's temperature variations may be added to arrive at the system pressure variation.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

- New section filed 8-12-97; operative 9-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
- 2. Amendment subsections (d)(1)-(d)(1)(B) and (d)(2) filed 2-2-2007; operative 3-4-2007 (Register 2007, No. 5).

#### § 2566. Notification Prior to Testing; Observation of Tests.

- (a) Notwithstanding any other statutory notification requirements, each operator shall notify the local area Division field office at least three working days prior to conducting any SLPT. The notification shall include all of the following information:
  - (1) The name, address, and telephone number of the operator.
- (2) The specific location of the pipeline section to be tested and the location of the test equipment.
  - (3) The date and time the test is to be conducted.
- (4) The name and telephone number of the person responsible for certification of the test results.
- (5) The information regarding the physical properties of the liquid hydrocarbon test medium specified in subsection (i) of section 2564.
- (b) In the event that the date or time of a proposed SLPT is to be changed, the operator shall, as soon as is practicable, notify the local area Division field office of the rescheduled date and time of such SLPT.
- (c) If, due to unforeseen circumstances, an unscheduled SLPT has to be conducted as soon as possible and within a period of three working days, the operator shall notify the local area Division field office as soon as it is practicable to do so, but in any case prior to commencement of the SLPT.
- (d) Staff of the Division may observe any test conducted pursuant to this Article.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 8–12–97; operative 9–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
- Amendment of subsections (a)(3) and new subsection (a)(5) filed 2-2-2007; operative 3-4-2007 (Register 2007, No. 5).

## § 2567. Static Liquid Pressure Testing; Witnessing of Tests and Certification of Results; Test Result Reports.

(a) Witnessing of SLPTs.

Any SLPT required by this Article shall be witnessed by either:

- (1) A person or persons who are registered on the current list of persons approved to witness testing activities of the State Fire Marshal; or
- (2) A person or persons who are certified by the terminal operator as having, at a minimum, the necessary experience and qualifications to witness SLPTs to ensure that they are effectively carried out.
  - (b) Certification of SLPT Results.

Any SLPT required by this Article shall have its test results certified by either:

- (1) A person who is registered on the current list of persons approved to certify test results of the State Fire Marshal; or
- (2) A person who is certified by the terminal operator as having, at a minimum, the necessary experience and qualifications to certify SLPT results and current valid Authorized Inspector certification under any one or more of the following programs:
- (A) The American Petroleum Institute's API 570, Piping Inspection Code, Appendix B-Inspector Certification;
- (B) The American Petroleum Institute's API 510, Pressure Vessel Inspection Code, Appendix B-API Authorized Pressure Vessel Inspector Certification;
- (C) The National Board of Boiler and Pressure Vessel Inspectors National Board Commissioned Inspector program NB-215, Revised October 24, 1995, 1055 Crupper Avenue, Columbus, Ohio 43229-1183; or
- (D) A California State accredited program for qualification for a Certificate of Competency as Authorized Inspector of Boiler and Pressure vessels under 8 CCR § 779.
- (c) Records of certified test results shall be maintained by the terminal operator for a period of at least ten (10) years following completion of testing. Each test record shall include at a minimum, all of the following information:
  - (1) The date of the test;
- (2) A description of the pipeline or pipeline segment tested including, but not limited to, a map of suitable scale showing the route of the pipeline and the location of pressure monitoring instruments and temperature probes used during testing; and
- (3) The results of the test, including, but not limited to, calculations made to adjust for changes in volume due to temperature, pressure and elevation changes.
- (d) Test results of any SLPT shall be subject to review by Division staff. When requested, the terminal operator shall provide the certified test results of any SLPT to the Division.
- (e) Staff of the Division shall not supervise, control, or otherwise direct the testing.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

- 1. New section filed 8–12–97; operative 9–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
- 2. Amendment of subsection (c)(2) filed 2–2–2007; operative 3–4–2007 (Register 2007, No. 5)

#### § 2568. Leak Prevention and Detection.

All Class II pipelines shall be provided with either a leak detection system or systems which meet the requirements of Section 2569, or be included in a preventative maintenance program which meets the requirements of Section 2570.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

History

1. New section filed 8–12–97; operative 9–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

#### § 2569. Leak Detection System or Systems.

- (a) Operators may meet the requirements of providing a leak detection system or systems by any of the following:
- (1) Instrumentation with the capability of detecting a transfer pipeline leak equal to two percent (2%) of the maximum design flow rate within five minutes;

- (2) Completely containing the entire circumference of the pipeline provided that a leak can be detected within fifteen minutes;
- (3) For transfer operations which do not involve the use of hoses, conducting a pressure test of the pipeline acceptable to the Division Chief immediately before any oil transfer; or
  - (4) A combination of the above strategies.
- (b) The operation of any leak detection system or systems provided under this section shall be described in the terminal's operations manual required by Section 2385 of Title 2, Division 3, Chapter 1, Article 5 of the California Code of Regulations.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 8–12–97; operative 9–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

#### § 2570. Preventative Maintenance Program.

- (a) A preventative maintenance program must ensure the continued operational reliability of any pipeline or pipeline system affecting quality, safety and pollution prevention. The program shall, at a minimum, include all applicable requirements and guidelines prescribed in API 570, Piping Inspection Code—Inspection, Repair, Alteration and Rerating of In–service Piping Systems. First Edition, June 1993, published by the American Petroleum Institute, 1220 L Street, N.W., Washington, D.C. 2005.
- (b) Inspection and Testing Requirements for Pipelines Included in a Preventative Maintenance Program.
- (1) For pipelines which are buried or submerged either partially or wholly the following shall be carried out:
- (A) Either annual SCPS inspections per API 570 guidelines and triennial SLPTs as prescribed in 2 CCR Section 2564(c)(3)(B) for pipelines fitted with SCPS, or annual SLPTs as prescribed in 2 CCR Section 2564(c)(3)(A) for pipelines not provided with SCPS, whichever is appropriate; and
- (B) An inspection program for emergency shut-off and isolation valves that control the flow of oil which shall, at a minimum, include that the stems of all such valves be stroked at least once a year.
- (2) For pipelines which are situated entirely above the ground or water, the following shall be carried out:
- (A) Triennial SLPTs as prescribed in 2 CCR Section 2564(c)(3)(C) and triennial pipewall thickness measurement inspections per API 570 guidelines; and
- (B) An inspection program for emergency shut-off and isolation valves that control the flow of oil which shall, at a minimum, include that the stems of all such valves be stroked at least once a year.
- (3) For any pipeline which is above ground for substantially all of its length, but which has a relatively short portion below ground buried beneath one or more berms or roads, the operator may petition the Division Chief for the application of testing and inspection requirements for the entire pipeline as prescribed under 2 CCR Section 2570(b)(2). Such petitions shall follow the procedures outlined in § 2571.
- (c) Any preventative maintenance program shall also include procedures to review proposed changes in operations, including materials transferred, to evaluate potential impacts on pipeline integrity.
- (d) Terminal operators shall validate that the preventative maintenance program is being effectively carried out by maintaining documentation which includes, at a minimum, all of the following:
- (1) The procedures for carrying out the preventative maintenance program in conformance with the requirements of API 570;
  - (2) Dates of inspections and tests;
- (3) Inspections and test data evaluation including analyses, pipewall thickness measurements and remaining life calculations;
- (4) The terminal management's internal audits of the program, including descriptions of controls and corrections for non-conformities;
  - (5) Repairs, alterations and rerating of piping systems; and
  - (6) Any other information pertinent to the integrity of pipelines.

(e) Every terminal operator shall provide to the Division access at any time to any documentation required under subsection (d) of this section. NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 8-12-97; operative 9-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

#### § 2571. Modifications or Alternatives.

- (a) Petitions for Modifications or Alternatives.
- (1) Any person subject to these regulations may submit a petition to the Division Chief for modifications or alternatives to the requirements of Article 5.5 as applied to the petitioner.
- (2) All petitions for modifications or alternatives must be submitted in writing. A petition may be in any form, but is must contain all data and information necessary to evaluate its merits.
  - (b) Response to Petitions.

The Division Chief shall respond in writing to any petition for modifications or alternatives within 30 days of receipt of the petition.

- (c) Approval of Modifications or Alternatives.
- (1) The Division Chief may approve any proposed modifications or alternatives to the requirements of Article 5.5 if he or she determines that the proposed modifications or alternatives will fulfill the purpose of these regulations as outlined in subsection (b) of Section 2560 of this Article.
- (2) If the Division Chief approves any proposed modification or alternatives under this section, a letter of approval shall be issued to the petitioner setting forth the findings upon which the approval is based.
  - (3) The Division Chief may withdraw the letter of approval of any

modifications or alternative requirements at any time if he or she finds that the person or persons subject to these regulations have not complied with the approved modified or alternative requirements.

(4) Withdrawal of a letter of approval under this section shall be effective upon receipt by the petitioner of written notification of the withdrawal from the Division Chief.

NOTE: Authority cited: Sections 8755 and 8757, Public Resources Code. Reference: Sections 8751, 8752, 8755, 8756 and 8757, Public Resources Code.

#### HISTORY

1. New section filed 8–12–97; operative 9–1–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## Article 6. Sale of Vacant United States Lands

#### HISTORY

1. Repealer of Article 6 (Sections 2400–2402) filed 12–2–81; effective thirtieth day thereafter (Register 81, No. 49). For prior history, see Registers 77, No. 6; 69, No. 15; 64, No. 23; and 55, No. 12.

# Article 6.5. Protection of the Lands and Resources Under the Jurisdiction of the State Lands Commission Within the Coastal Zone

NOTE: Authority cited: Section 6108, Public Resources Code. Division 6 (Section 6100, et seq.), Division 13 et seq.) and Division 20 (Section 30000, et seq.), Public Resources Code.

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#### HISTORY

- 1. New Article 6.5 (Sections 2501–2563, not consecutive) filed 3–11–77; effective thirtieth day thereafter (Register 77, No. 11).
- 2. Repealer of Article 6.5 (Sections 2501–2563, not consecutive) filed 12–2–81; effective thirtieth day thereafter (Register 81, No. 49).

## Article 7. Procedures Under Section 126, Government Code

#### § 2600. Costs.

A contract to reimburse the Commission for costs associated with the cession shall be executed by the United States and the Commission prior to publication of notice of hearing. The procedure for determining the reimbursement shall be as set forth in Article 1 of this Chapter at Section 1905

NOTE: Authority cited: Section 126, Government Code. Reference: Section 126, Government Code.

#### HISTORY

Repealer of Article 7 (Sections 2600–2604) and new Article 7 (Sections 2600–2606) filed 11–23–82; effective thirtieth day thereafter (Register 82, No. 48).

#### § 2601. Notice.

Not more than 30 and not less than 15 days before the hearing, a notice of hearing shall be published one time in a newspaper of general circulation in the area in which the subject land is located. Not less than 10 days before the hearing, personal service shall be made on the clerk of the county board of supervisors and the city council if appropriate. Affidavit of publication and return of service shall be filed with the Commission before the hearing.

The notice shall be entitled "Notice of Hearing to Determine Cession of Jurisdiction by the United States Over Land Known as \_\_\_\_\_." The notice shall contain a description of the lands and shall set forth the date, the time and place of the public hearing.

The notice shall recite that the hearing shall be had pursuant to Government Code Section 126, and amendments, if any, and shall advise that interested parties may appear personally or through counsel or by letter to present evidence on whether cession of jurisdiction is in the best interests of the State.

NOTE: Authority cited: Section 126, Government Code. Reference: Section 6110, Public Resources Code.

#### § 2602. Type of Hearing.

The hearing held pursuant to said published notice may be conducted by both oral and written presentations. The hearing may be before the Commission, or a staff member designated by the Commission to conduct the hearing.

NOTE: Authority cited: Section 126, Government Code. Reference: Section 6110, Public Resources Code.

#### § 2603. Procedure on Hearing Argument.

Unless otherwise ordered by the Commission, the person requesting the hearing shall present material evidence in support of his application. After such person rests, any other interested person may present any material evidence in support of or in opposition to such application. The Commission may, in its discretion, limit cumulative evidence and may refuse or allow argument, and in case of allowance, may limit the same. NOTE: Authority cited: Section 126, Government Code. Reference: Section 126, Government Code.

#### § 2604. Evidence.

Oral evidence shall be taken only on oath or affirmation. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for

the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Hearsay evidence may be received upon a showing satisfactory to the Commission of the difficulty of obtaining direct evidence.

NOTE: Authority cited: Section 126, Government Code. Reference: Section 126, Government Code.

#### § 2605. Decision.

After all of the evidence has been received, the Commission shall make its decision at the next regularly scheduled public meeting.

NOTE: Authority cited: Section 126, Government Code. Reference: Section 6110, Public Resources Code.

#### § 2606. Extension of Jurisdiction.

Where concurrent criminal jurisdiction has been granted under Government Code Section 126 for five years, any application for renewal and extension of such jurisdiction shall be considered as a new application.

The above regulations governing cessions of jurisdiction shall apply in all cases.

NOTE: Authority cited: Section 126, Government Code. Reference: Section 126, Government Code.

## Article 8. Procedures Under Government Code Section 113

#### § 2700. Costs.

A contract to reimburse the Commission for costs associated with the retrocession shall be executed by the United States and the Commission prior to publication of notice of hearing. The procedure for determining the reimbursement shall be as set forth in Article 1 of this Chapter at Section 1905.

NOTE: Authority cited: Section 113, Government Code. Reference: Section 113, Government Code.

#### HISTORY

- 1. New Article 8 (Sections 2700 through 2710) filed 7–8–71; effective thirtieth day thereafter (Register 71, No. 28).
- 2. Repealer of Article 8 (Sections 2700–2710) and new Article 8 (Sections 2700–2705) filed 11–23–82; effective thirtieth day thereafter (Register 82, No. 48).

#### § 2701. Notice.

Not more than thirty (30) and not less than fifteen (15) days before the hearing, a notice of hearing shall be published one time in a newspaper of general circulation in the area in which the subject land is located. Not less than ten (10) days before the hearing, personal service shall be made on the clerk of the county board of supervisors and the city council if appropriate. Affidavit of publication and return of service shall be filed with the Commission before the hearing.

The notice shall be entitled "Notice of Hearing to Determine Retrocession of Jurisdiction by the United States Over Land Known as \_\_\_\_\_\_." The notice shall contain a description of the land and shall set forth the date, time, and place of the public hearing.

The notice shall recite that the hearing shall be had pursuant to Government Code Section 113, and amendments, if any, and shall advise that interested parties may appear personally or through counsel or by letter to present evidence on whether retrocession of jurisdiction is in the best interest of the State.

NOTE: Authority cited: Section 113, Government Code. Reference: Section 113, Government Code.

#### § 2702. Type of Hearing.

The hearing held pursuant to said published notice may be conducted by both oral and written presentations. The hearing may be before the Commission, or a staff member designated by the Commission to conduct the hearing.

NOTE: Authority cited: Section 113, Government Code. Reference: Section 6110, Public Resources Code.

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#### § 2703. Procedure on Hearing Argument.

Unless otherwise ordered by the Commission, the person requesting hearing shall present material evidence in support of his application. After such person rests, any other interested person may present any material evidence in support of or in opposition to such application. The Commission may, in its discretion, limit cumulative evidence and may refuse or allow argument, and in case of allowance, may limit the same.

NOTE: Authority cited: Section 113, Government Code. Reference: Section 113, Government Code.

#### § 2704. Evidence.

Oral evidence shall be taken only on oath or affirmation. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Hearsay evidence may be received upon a showing satisfactory to the Commission of the difficulty of obtaining direct evidence.

NOTE: Authority cited: Section 113, Government Code. Reference: Section 113, Government Code.

#### § 2705. Decision.

After all of the evidence has been received, the Commission shall make its decision at the next regularly scheduled public meeting.

NOTE: Authority cited: Section 126, Government Code. Reference: Section 6110, Public Resources Code.

## Article 9. Lease Involving Granted Tide and Submerged Lands

#### § 2800. General.

The provisions of this Article shall apply only to those lessees, lenders, or contract holders who wish to secure Commission findings specified in Public Resources Code Section 6702(b) regarding leases, contracts or other instrument involving granted tide and submerged lands.

NOTE: Authority cited: Sections 6105, 6108, 6701, 6702, and 6703, Public Resources Code. Reference: Section 6702, Public Resources Code.

#### History

- New Article 9 (Sections 2800 through 2807) filed 9–27–72; effective thirtieth day thereafter (Register 72, No. 40).
- 2. Repealer of Article 9 (Sections 2800–2807) and new Article 9 (Sections 2800–2803) filed 12–2–81; effective thirtieth day thereafter (Register 81, No. 49). For prior history, see Register 81, No. 6.

#### § 2801. Procedure.

- (a) Applicants desiring Commission findings under Public Resources Code 6702(b) shall:
- (1) Complete in full and submit to the Commission, an application approved in form and content by the Commission; and
- (2) Cause a grantee report, approved in form and content by the Commission to be completed in full and submitted directly by the legislative grantee; and
- (3) Submit additional information as required if the application or grantee report are in any manner inadequate or incomplete.
- (b) An inadequate or incomplete application or grantee report for which required additional information is not forthcoming shall be rejected.
- (c) The 90-day time limitation specified in Public Resources Code Section 6704 shall commence to run when the application and grantee report, complete in all respects, have been received by the Commission.

(d) Approved application and grantee report forms referred to in this Article are available from and shall be submitted to the principal office of the Commission.

NOTE: Authority cited: Sections 6105, 6108, 6701, 6703, and 6704, Public Resources Code. Reference: Section 6704, Public Resources Code.

#### § 2802. Commission Criteria.

The Commission in determining pursuant to Public Resources Code Section 6702(b)(3) whether a lease, contract or other instrument is in the best interest of the State will consider whether the use, project or activity permitted by such instrument is:

- (a) Consistent with current Commission policies, practices and procedures used for administering lands within its jurisdiction;
  - (b) economically viable, necessary and desirable;
  - (c) appropriate for developmental mix;
  - (d) conducive to public access;
  - (e) consistent with environmental protection;
  - (f) otherwise in the best interests of the state.

NOTE: Authority cited: Sections 6005, 6105, 6108, 6701, and 6702, Public Resources Code. Reference: Sections 6005, 6701, and 6702, Public Resources Code.

#### § 2803. Approval Limitation.

Approval by the Commission of any lease, contract or other instrument pursuant to this Article shall not constitute approval of any modification or amendment of such instrument made pursuant to the provisions of such instrument or otherwise. Separate approval shall be required for such modifications or amendments.

NOTE: Authority cited: Sections 6105, 6108, 6701, and 6706, Public Resources Code. Reference: Section 6706, Public Resources Code.

#### Article 10. Regulations for the Implementation of the California Environmental Quality Act

#### § 2901. Authority and Purpose.

These regulations are promulgated pursuant to the requirements of Section 21082 of the Public Resources Code and Section 15050 of the California Administrative Code to provide the State Lands Commission with definitions and procedures for orderly and consistent evaluations of projects that are subject to the requirements of the California Environmental Quality Act (CEQA). (Public Resources Code Section 21000, et seq.)

NOTE: Authority cited: Section 21082, Public Resources Code. Reference: Title 14, Section 15050, California Administrative Code.

#### HISTORY

- Repealer of Article 10 (Sections 2901–2915) and new Article 10 (Sections 2901–2911) filed 4–3–75; effective thirtieth day thereafter (Register 75, No. 14). For prior history, see Register 73, Nos. 30 and 52 and Register 74, Nos. 13 and 19.
- 2. Repealer of Article 10 (Sections 2901–2910) and new Article 10 (Sections 2901–2909) filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 76, No. 2.
- 3. Repealer of Article 10 (Sections 2901–2909) and new Article 10 (Sections 2901–2909) filed 3–1–78; designated effective 4–1–78 (Register 78, No. 9).
- Repealer of Article 10 (Sections 2901–2909) and new Article 10 (Sections 2901–2906, not consecutive) filed 12–2–81; effective thirtieth day thereafter (Register 81, No. 49). For prior history, see Registers 78, Nos. 23 and 29.

#### § 2902. Applicability of the State EIR Guidelines.

The State EIR Guidelines (14 California Administrative Code Sections 15000, et seq.) are hereby incorporated by reference as though set forth herein in full.

 $NOTE: Authority\ cited: Sections\ 21082\ and\ 21083,\ Public\ Resources\ Code.\ Reference:\ Section\ 15050(e),\ Title\ 14,\ California\ Administrative\ Code.$ 

#### § 2904. Statutory Exemptions.

The following Commission activity shall be considered ministerial: The issuance of a patent upon presentation of a valid Certificate of Purchase.

NOTE: Authority cited: Section 21082, Public Resources Code; and Section 15073(a), Title 14, California Administrative Code. Reference: Section 7729,

Public Resources Code; and Sections 15050(c)(1)(B) and 15073(a), Title 14, California Administrative Code.

#### § 2905. Categorical Exemptions.

The following Commission activities are categorically exempted:

- (a) Class 1: Existing Facilities
- (1) Remedial, maintenance and abandonment work on oil and gas and geothermal wells involving the alteration of well casings, such as perforating, cementing, casing repair or replacement, installation or removal of down-hold production equipment, cement plugs, bridge plugs, and permanent packers or packers set to isolate producing intervals.
- (2) Commission action involving existing structure or facility that is in an acceptable state of repair. This is intended to cover actions of the Commission which in effect authorize continued operation, repair, maintenance or minor alteration of any existing public or private structure or facility, land fill or equipment which meets the above criteria. The Commission may exclude from this class any structure that has been erected without written authorization in the form of a lease or permit from the State Lands Commission.
  - (b) Class 2: Replacement or Reconstruction

Replacement or reconstruction of deteriorated or damaged structures on State Lands.

- (c) Class 3: New Construction of Small Structures
- (1) A pier, floating dock, or boathouse, that will occupy no more than 3,000 square feet of State land.
- (2) A pier, floating dock, or boathouse, for non-commercial use by more than applicant, applying jointly, where all the applicants are littoral (next to the shore) landowners, such as homeowner's associations, and the littoral parcels are next to one another, that will occupy the following areas of State lands:

Number of Adjacent and	
Littoral Landowners	Area of Use
2	4,000 sq. ft. or less
3	4,750 sq. ft. or less
4	5,250 sq. ft. or less
5 or more	6,000 sq. ft. or less

- (3) Small boat mooring buoys.
- (4) A floating platform used solely for swimming.
- (5) Buoys for delineating a safety area or designated speed zones, provided that public navigational and fishing rights are not affected.
  - (d) Class 4: Minor Alteration to Land
  - (1) Grazing of livestock where disturbance of soil does not occur.
- (2) Rebuilding or repair of levees or other protective structure. Minor dredging of material for above purposes.
- (3) Removal of derelict or hazardous structures on State waterways or school lands.
- (4) Minor periodic maintenance dredging for existing docks and marinas
- (5) Replanting of timber on previously harvested, burned, or barren areas of school lands where extensive site preparation is not permitted.
  - (e) Class 6: Information Collection
- (1) Core hole drilling, operations to obtain foundation design data, to gather data and information for environmental documentation where minimal or no disturbance of the land surface results.
- (2) Core hole drilling for the purposes of mineral evaluation pursuant to Public Resources Code Section 6401(b) where minimal or no disturbance of the land surface results.
- (3) Surface or underwater biological, geological, geophysical, cultural (archeological/historical), and geochemical surveys where minimal or no disturbance of the land surface results.
- (4) Temperature survey holes where minimal disturbance of the surface results.
  - (5) Wind or water current, temperature, or other monitoring devices.
- (6) Salvage exploration where no disturbance of the environment is contemplated.
- (f) Class 7: Actions by Regulatory Agencies for Protection of Natural Resources

- (1) Lease or permits to public agencies or conservation organizations for wildlife preservation activities, or to the State Department of Parks and Recreation for historical or other cultural activities. Construction activities are not included in this exemption.
- (2) Timber harvesting of burned or diseased timber on school lands in accordance with the Forest Practices Act (Public Resources Code, Sections 4511, et seq.).
- (g) Class 16: Transfer of Ownership of Land in Order to Create Parks Lease and permits to person and public agencies for the development of public parks including alterations to the land for such purposes.

NOTE: Authority cited: Section 21084, Public Resources Code; and Sections 15100 et seq., Title 14, California Administrative Code. Reference: Sections 15100, 15100.2(c), 15100.4, 15101 (Class 1), 15102 (Class 2), 15103 (Class 3), 15104 (Class 4), 15106 (Class 6), 15107 (Class 7), and 15116 (Class 16), Title 14, California Administrative Code.

#### § 2906. Adequate Time for Review and Comment.

The review period for the final EIR shall be 15 days.

NOTE: Authority cited: Section 21104, Public Resources Code; and Section 15160(a), Title 14, California Administrative Code. Reference: Section 15160(a), Title 14, California Administrative Code.

## Article 11. Regulations Protecting Environmentally Significant Lands

#### § 2951. Authority and Purpose.

These regulations are adopted pursuant to Public Resources Code Section 6370 in order to provide for the permanent protection of lands within Commission jurisdiction which possess significant environmental values.

NOTE: Authority cited: Sections 6370 and 6370.1, Public Resources Code. Reference: Sections 6370 and 6370.1, Public Resources Code.

#### HISTORY

- 1. New Article 11 (§\$2951–2967) filed 1–9–76; effective thirtieth day thereafter (Register 76, No. 2). For history of former Article 11, see Register 74, No. 19.
- 2. Repealer of Article 11 (Sections 2951–2967) and new Article 11 (Sections 2951–2954) filed 12–2–81; effective thirtieth day thereafter (Register 81, No.

#### § 2952. Significant Lands Inventory.

Pursuant to Public Resources Code Section 6370.2, the Commission prepared a report entitled "Inventory of Unconveyed State School Lands and Tide and Submerged Lands Possessing Significant Environmental Values," approved December 1, 1975. This report shall be available to the public and shall herein be referred to as the "Significant Lands Inventory."

NOTE: Authority cited: Section 6370 and 6370.2, Public Resources Code. Reference: Sections 6370 and 6370.2, Public Resources Code.

#### § 2953. Definitions.

- (a) Environmentally significant lands: Lands within the jurisdiction of the Commission within which environmentally significant values have been identified pursuant to Public Resources Code Section 6370.1.
- (b) Significant environmental values: Those features or characteristics which have been identified pursuant to Public Resources Code Section 6370.1, the criteria for which are set forth in the Significant Lands Inventory.
- (c) Use Classification: A classification system designed to provide permanent protection to identify significant environmental values, more particularly described in the Significant Lands Inventory.

NOTE: Authority cited: Sections 6370 and 6370.1, Public Resources Code. Reference: Sections 6370 and 6370.1, Public Resources Code.

## § 2954. Permanent Protection of Environmentally Significant Lands Through CEQA.

Projects which will affect environmentally significant lands will be subject to review by the use of the CEQA process under the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.); the State EIR Guidelines (14 California Administrative Code Sections 15000, et seq.); and the Commission's Regulations for the Imple-

mentation of the California Environmental Quality Act (Article 10 of this Chapter).

In order to provide permanent protection to environmentally significant values, projects must be designed to be consistent with the use classifications assigned under the Significant Lands Inventory or pursuant to Public Resources Code Section 6219. If such consistency cannot be accomplished through mitigation or alteration of the project, the project must be denied. The Commission may not apply Section 15089 of the State EIR Guidelines, regarding a Statement of Overriding Considerations, to approve a project which cannot be made consistent with the use classification assigned to the subject parcel.

NOTE: Authority cited: Sections 6219 and 6370, Public Resources Code. Reference: Sections 6219 and 6370, Public Resources Code.

#### Article 12. Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> STATE LANDS COMMISSION 1807 13TH STREET, ROOM 101 SACRAMENTO, CALIFORNIA 95814

FAIR POLITICAL PRACTICES COMMISSION 1100 K STREET SACRAMENTO, CALIFORNIA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Article 12 of Chapter 1 of Division 3, Title 2, California Code of Regulations, and consists of sections numbered and titled as follows:

Article 12. Conflict of Interest Code

Section

2970.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

#### HISTORY

- 1. New article 12 (sections 2970–2979, not consecutive) filed 3–11–77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-16-71 (Register 77, No. 11).
- 2. Repealer of article 12 (sections 2970-2978) and new article 12 (section 2970 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
- 3. Amendment filed 3–30–92; operative 4–29–92. Approved by Fair Political Practices Commission 1–21–92 (Register 92, No. 14).
- 4. Amendment filed 12–26–95; operative 1–25–96. Approved by Fair Political Practices Commission 10–23–95. Submitted to OAL for printing only pursuant to Government Code section 87303 (Register 95, No. 52).
- 5. Amendment of Appendix filed 4-1-98; operative 5-1-98. Approved by Fair Political Practices Commission 10-31-97 (Register 98, No. 14).
- 6. Amendment of Appendix filed 7-25-2002; operative 8-24-2002. Approved by Fair Political Practices Commission 5-24-2002 (Register 2002, No. 30).
- 7. Amendment of Appendix filed 5-8-2003; operative 6-7-2003. Approved by Fair Political Practices Commission 3-12-2003 (Register 2003, No. 19).
- 8. Amendment filed 10-17-2007; operative 11-16-2007. Approved by Fair Political Practices Commission 8-22-2007 (Register 2007, No. 42).

#### Article 13. Contracts Securing Architectural, Landscape Architecture, **Engineering, Environmental, Land** Surveying, and Construction Project **Management Services**

#### § 2980. Purpose and Scope.

The purpose of this article is to establish, as authorized and required by Government Code Sections 4525 et seq., procedures for securing architectural, landscape architecture, engineering, environmental, land surveying, and construction project management services.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Sections 4525–4529.5, Government Code.

#### HISTORY

- 1. New article 13 (sections 2990-2980.9) and section filed 5-1-2001 as an emergency; operative 5–1–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2001 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 5-1-2001 order transmitted to OAL 5-1-2001 and filed 5-29-2001 (Register 2001, No. 22).

#### § 2980.1. Definitions.

As used in these regulations, the following terms have the following

- (a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.
- (b) "Small business" firm is one that meets the definition of small business firm set forth in Title 2, California Code of Regulations, Section 1896(n).
  - (c) "Commission" is the State Lands Commission.
- (d) "Executive Officer" is the Executive Officer of the State Lands Commission or any person designated by the Executive Officer to act on behalf of the Executive Officer.
- (e) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically and justifiably per-
- (f) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Government Code Section 4529.5 for management and supervision of work performed on state construction projects.
- (g) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.
- (h) "Publish" shall mean publication of notices describing projects for which architectural, landscape architecture, engineering, environmental, land surveying, or construction project management services will be required in the publications of the respective professional societies and in the State Contracts Register. "Publish" shall also include publication of such notices in electronic form through the Internet.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Section 4525, Government Code.

#### HISTORY

1. New section filed 5-1-2001 as an emergency; operative 5-1-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2001 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

#### § 2980.2. Conflict of Interest/Unlawful Activity Prohibited.

Any practice which might result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration, is strictly prohibited, and each Commission employee is specifically prohibited from participating in the negotiation or selection process when that employee has an interest in, or has a personal or business relationship with a person affiliated with, any person or business entity seeking a contract with the Commission or solicited by the Commission for such a contract which would subject that employee to the prohibition of Section 87100 of the Government Code.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Sections 4526 and 87100, Government Code.

#### HISTORY

- 1. New section filed 5-1-2001 as an emergency; operative 5-1-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2001 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

## § 2980.3. Establishment of General Criteria and Establishment of List of Pre–Qualified Contractors.

- (a) The Executive Officer shall publish at least annually a notice that solicits statements of qualification and performance data from firms that provide the services defined in Section 2980.1.
- (b) The Executive Officer shall establish and publish a list of relevant general criteria which will form the basis for adding such firms to a list of pre–qualified contractors maintained by the Commission. The general criteria shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm, location, familiarity with pertinent regulatory processes, familiarity with project locale, previous experience with a specific type of project, and other considerations deemed relevant.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Section 4527, Government Code.

#### HISTORY

- 1. New section filed 5-1-2001 as an emergency; operative 5-1-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2001 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

#### § 2980.4. Construction Project Management Expertise.

Any individual or firm proposing to provide construction project management services pursuant to these regulations shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost–benefit analysis, claims review and negotiation, and general management and administration of a construction project.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Section 4529.5, Government Code.

#### **HISTORY**

- 1. New section filed 5–1–2001 as an emergency; operative 5–1–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2001 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

#### § 2980.5. Notice and Publication for Specific Projects

(a) The Executive Officer shall publish a statewide announcement of any project or projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction management services. Such announcement shall contain, at a minimum, the type of services required, a description of the project, a projected schedule for the project, a description of responsive material that must be submitted by firms not on the Commission's list of pre–qualified firms, and a date before which that responsive material must be submitted to the Commission.

- (b) The Executive Officer may, prior to engaging a firm for a specific project, develop and include in the published statewide announcement for the project a list of relevant factors, if any, that may be considered in selecting a contractor for that particular project. Such factors may be considered by the Executive Officer according to the nature of the project, the needs of the State and the complexity and special requirements of that specific project.
- (c) The Executive Officer shall endeavor to provide to all small business firms which have indicated an interest in receiving such announcements a copy of each project announcement. Failure of the Executive Officer to send a copy of an announcement to any firm or failure of such firm or firms to receive an announcement sent by the Executive Officer shall not operate to preclude any contract.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Sections 4527 and 4528, Government Code.

#### **HISTORY**

- 1. New section filed 5-1-2001 as an emergency; operative 5-1-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2001 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

#### § 2980.6. Estimate of Value of Services.

Before any discussion with any firm concerning fees for services provided in connection with a particular project, the Executive Officer shall cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates. At any time the Executive Officer determines the State's estimates to be unrealistic due to rising costs, special conditions, or for other relevant considerations, the estimate shall be reevaluated and modified if necessary.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Section 4528, Government Code.

#### HISTORY

- 1. New section filed 5-1-2001 as an emergency; operative 5-1-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2001 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

#### § 2980.7. Negotiation of Contract.

- (a) After expiration of the notice/compliance period stated in an announcement, the Executive Officer shall evaluate current statements of qualifications and performance data on file with the Commission, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding the Commission's need for services, and the ability of each firm to provide those services to the Commission for the proposed project in a timely manner. The Executive Officer shall then select therefrom, in order of preference, based upon criteria established pursuant to section 2980.3, no less than three of the firms deemed to be the most highly qualified to provide the services required.
- (b) The Executive Officer shall, in accordance with section 6106 of the Public Contracts Code, negotiate a contract with the best-qualified firm for services at compensation that the Executive Officer determines is fair and reasonable to the State of California. Should the Executive Officer be unable to negotiate a satisfactory contract with the firm considered to be the best-qualified at a price the Executive Officer determines to be fair and reasonable to the State of California, negotiations with that firm shall be formally terminated. The Executive Officer shall then undertake ne-

gotiations with the second best-qualified firm. Failing accord with the second most qualified firm, the Executive Officer shall terminate negotiations. The Executive Officer shall then undertake negotiations with the third most qualified firm.

(c) Should the Executive Officer be unable to negotiate a satisfactory contract with any of the selected firms, the Executive Officer shall select additional firms in order of their competence and qualifications and continue negotiations in the same manner until a satisfactory agreement is reached.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Sections 4527 and 4528, Government Code.

#### HISTORY

- 1. New section filed 5-1-2001 as an emergency; operative 5-1-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2001 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

#### § 2980.8. Contracting in Phases.

Should the Commission determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions at the time the initial phase is negotiated, provided that the Executive Officer shall have determined that the firm is the best qualified to perform the whole project at a fair and reasonable cost and that the contract contains provisions that the State, at its option, may utilize the firm for other phases and that the

firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Section 4528, Government Code.

#### HISTORY

- 1. New section filed 5–1–2001 as an emergency; operative 5–1–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2001 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

#### § 2980.9. Amendments.

In instances where the Commission or the Executive Officer orders a necessary change in the character or scope of work to be performed in the course of performance of the contract, the firm's compensation may, by written agreement between the Commission and the firm, be adjusted in an amount which reasonably reflects the value of the change from that character and scope of work which existed prior to the change.

NOTE: Authority cited: Section 4526, Government Code; and Section 6108, Public Resources Code. Reference: Section 4528, Government Code.

#### HISTORY

- 1. New section filed 5–1–2001 as an emergency; operative 5–1–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2001 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 5–1–2001 order transmitted to OAL 5–1–2001 and filed 5–29–2001 (Register 2001, No. 22).

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Barclays Official

## CALIFORNIA CODE OF REGULATIONS

## Title 2. Administration

Division 3. State Property Operations
Chapter 2. California Arts Council

Vol. 3



## Chapter 2. California Arts Council

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#### Chapter 2. California Arts Council

## Subchapter 1. The Conflict of Interest Code of the California Arts Council

NOTE: Authority cited: Section 8750, Government Code. Reference: Sections 8750–8756 and 81000, Government Code.

#### HISTORY

- 1. Repealer of Chapter 2, Article 1 (Sections 3000–3007) filed 4–20–77; effective thirtieth day thereafter (Register 77, No. 17).
- New Subchapter 1 of Chapter 2 (Sections 3500–3517 and Exhibit A) filed 3–6–79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–8–77 (Register 79, No. 10).
- 3. Redesignation and amendment of Title 2, Division 3, Chapter 2, Subchapter 1 (Sections 3500–3517 and Exhibit A) to Title 2, Division 8, Chapter 6 (Sections 27000–27017, Exhibits A and B) filed 3–6–80; effective thirtieth day thereafter (Register 80, No. 10).

## Subchapter 2. Grant Application Criteria and Procedure of the California Arts Council

#### Article 1. Statement of Purpose

#### § 3600. Statement of Purposes.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

- 1. New subchapter 2 (articles 1–11, sections 3600–3644, not consecutive) filed 4–24–79 as procedural and organizational; effective upon filing (Register 79, No. 17).
- 2. Repealer filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

#### Article 2. Eligibility

#### § 3604. Eligibility.

- (a) To be eligible for funding, an applicant shall meet the following eligibility requirements.
  - (1) Organizations shall be required to meet the following:
- (A) have proof of non-profit status under section 501(c)(3) of the Internal Revenue Code, or under section 23701(d) of the California Revenue and Taxation Code, or be a unit of government.
- (B) be consistently engaged in arts programming for a specific number of years prior to time of application;
- (C) must comply with the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 (as amended), the Age Discrimination Act of 1975, observe provision of the Drug Free Workplace Act, and Government Code sections 11135–11139.5;
- (D) must comply with Fair Labor Standards Act; as defined by the Secretary of Labor in part 505 of title 29 of the Code of Federal Regulations.
  - (E) must have principal place of business in California;
  - (F) must have completed prior contract evaluations, if applicable;
- (G) must have approval of the applicant organization's board of directors or other governing body.
  - (2) Individuals shall be required to meet the following:
- (A) must be a working artist/and show professional competence in an artistic discipline;
- (B) must be a resident of California, except for artist applying in the Arts in Public Building Program.
- (C) must comply with the Personal Responsibility and Work Opportunity Act of 1996.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code; and 8 U.S.C. Sections 1621, 1641 and 1642.

#### HISTORY

1. Repealer and new section filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

- 2. New subsection (a)(2)(C) and amendment of Note filed 3-20-98 as an emergency; operative 3-20-98 (Register 98, No. 12). A Certificate of Compliance must be transmitted to OAL by 7-20-98 or emergency language will be repealed by operation of law on the following day.
- 3. New subsection (a)(2)(C) and amendment of NoTE refiled 6–15–98 as an emergency; operative 7–21–98 (Register 98, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 6–15–98 order transmitted to OAL 10–6–98 and filed 11–17–98 (Register 98, No. 47).

#### Article 3. Grants

#### § 3608. Grants.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Repealer filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

#### Article 4. Grant Categories

#### § 3612. Grant Categories.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Repealer filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

#### Article 5. Funding Criteria

#### § 3616. Funding Criteria.

- (a) The California Arts Council shall predetermine which program categories shall be awarded contracts for services and which shall be awarded grants. Grants and/or contracts shall be awarded only to those individuals and/or organizations which demonstrate high artistic merit, high standards of performance and administration, promote cross—cultural exchange, serve unique needs created by geographic or other special factors, encourage the development and assimilation of new art forms, and/or demonstrate the problem solving capacities of arts and artists for the general public and the various agencies and institutions that serve them. The California Arts Council shall also consider the effect of the program or project on the artist and/or the organization as well as the community, the capacity to carry out the project, and the need that is demonstrated for the support requested.
- (b) The California Arts Council shall not fund with local assistance monies for profit organizations, capital investments, out—of—state travel or expenditures for equipment, except as recommended by the Executive Director, with the approval of the Council and relevant Control agencies. NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Amendment filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

#### **Article 6. Matching Grants, or Contracts**

#### § 3620. Matching Grants, or Contracts.

The California Arts Council may require grants or contracts to be matched. A match is constituted in dollars or in goods or services (inkind match) from the local organization, school or agency.

- (a) The following criteria shall guide the California Arts Council in determining which program, grants or contracts will be matched and the amount of the match:
  - (1) The ability of the applicants to raise matching dollars.
- (2) The extent to which matching dollars addresses program goals and objectives.
- (3) The need for the California Arts Council to provide a match for federal dollars awarded to the state and re–granted to local organizations or individuals.

- (b) The following match designs shall be considered in Arts Council programs:
- (1) Cash match: the applicant must provide for some of the cost of the project and match the California Arts Council dollars. The ratio of the match will vary from program to program for the reasons described in (a) above.
- (2) Progressive match: this is a multi-year commitment requiring different match responsibilities each year.
- (3) No match: grants or contracts are awarded with no matching requirements.
- (4) No-cash match: goods and/or services can be provided in place of cash.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Amendment filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

## Article 7. Program Development Procedures

#### § 3624. Program Development Procedures.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Repealer filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

## Article 8. Application Review and Awards Process

#### § 3628. Application Review and Awards Process.

- (a) Applicants shall apply under a specific funding category and are required to complete the application forms contained in the relevant publications when applying for a specific grant. The California Arts Council hereby incorporates by reference the specific applications and specific instructions contained within these publications for each program.
- (1) Art in Public Buildings Program Instructions and Application
  - (2) Artist Fellowship Program Instructions and Application 1990-91
  - (3) Artists in Residence

Individual Artist Instructions and Application 1991-92

Multi-Residency Instructions and Application 1990-91

- (4) California Challenge Program Instructions and Application 1990–91
  - (5) Multi-Cultural

Advancement Grant Application and Instructions 1990–91

Entry Grant Instructions and Application 1990-93

(6) Organizational Support Program

Mid-Size and Large Organizations Instructions and Application 1990-91

Small Organizations Instructions and Application 1990-91

Large Budget Organizations Instructions and Application 1990-91

- (7) State-Local Partnership Instructions and Application 1990-91
- (8) Touring Artist Directory 1990–91
- (9) Touring/Presenting Program Instructions and Application 1991–92 and 1992–93
- (10) Traditional Folk Arts Program Instructions and Applications 1990-91
- (b) The application forms are intended to provide the California Arts Council with information and shall include, but not necessarily be limited to:
  - (1) Name, mailing address, telephone and social security number.
  - (2) A description of the project, including a budget, if applicable.
- (3) A brief statement of the applicant's objectives and how the proposed project will achieve the objective.

- (4) An annual income and expenditure report and if applicable, source of match (Applicants for fellowships, apprenticeships, and commissions are exempted from reporting this information.)
- (5) Documentation and support materials. Some examples are videotapes, audio cassettes, slides, catalogs, publicity photos, books and manuscripts.
- (c) Upon receipt of an application each application, shall be reviewed by the California Arts Council or its designee for compliance with instructions and completeness and then forward to the peer review panel. Incomplete applications or those not in compliance will not be reviewed by the peer review panel.
- (1) Members of the peer review panels shall be approved by the Council. These members shall be from the arts community and provide their expertise in evaluating all aspects of applications. Panels shall be selected by the California Arts Council to represent the diversity of California in terms of geography, gender, ethnicity and arts discipline.
- (2) One or more Council Members may be present at peer review panels which meet and discuss each application. After discussion and evaluation of applications according to criteria outlined in each program's instructions, (section 3628(a) above) the panel shall rank each application in accordance with the highest priority for funding. The list of recommendations shall then be presented to the full Council which shall make the final decisions on funding and awards at a public meeting.
  - (d) Notification of applicant status.
- (1) All applicants, those receiving and those denied grant awards, shall be notified by the California Arts Council staff of the Council's decision by mail within ten working days after the public meeting.
- (2) Applicants approved for funding shall receive information from the California Arts Council outlining the award agreement, mutual responsibilities and safeguards for the agency and the recipient.
- (3) Grant award letters or contract for services agreements shall be signed by the grantee and returned to the agency within 60 days of the date postmarked.
  - (e) Payment on direct grants.

Grant award payments shall be allocated by either a lump sum award or a partial advance payment with the final payment of the grant award, to be made after evaluation of the project.

- (f) Payment on contracts for services.
- (1) The California Arts Council shall make payment in arrears on contracts for services, meaning that grantees shall be reimbursed for expenses already incurred. Payment will be made within thirty days after receipt of invoices.
- (2) The California Arts Council shall determine when advance payments may be made to recipients of contracts for services. These advance payments shall not exceed 25% of the contract amount at any one time. Those applicants that receive advance payments shall submit invoices for actual expenditures prior to the receipt of any additional funds.
- (3) The final 10% of a contract will be withheld until the recipient has submitted the final evaluation report.
- (g) The California Arts Council shall not claim ownership, copyright rights, royalties or any other claims to artwork produced as a result of a California Arts Council grant or contract. The California Arts Council may request documentation or copies of artwork for purposes of the California Arts Council record.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

- 1. Amendment filed 12–31–85; effective thirtieth day thereafter (Register 86, No. 1)
- 2. Repealer and new section filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

## § 3629. Limitations on Individual Contract Grants for

(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual applying for the public benefit.

Page 318 Register 98, No. 47; 11–20–98

- (b) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104–193 (PRWO-RA)), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 *et seq.*), or aliens paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for less than one year, are not eligible to receive individual contract grants as set forth in Section 8753, Government Code, except as provided in 8 U.S.C. § 1621(c)(2).
- (c) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive a public benefit, is, under Section 431(b) and (c) of the PRWORA (8 U.S.C. § 1641(b) and (c)), any of the following:
- (1) An alien who is lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).
- (2) An alien who is granted asylum under Section 208 of the INA (8 U.S.C. § 1158).
- (3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).
- (4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for a period of at least one year.
- (5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)) (as in effect immediately before the effective date of Section 307 of division C of Public Law 104–208) or Section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) (as amended by Section 305(a) of division C of Public Law 104–208).
- (6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. (8 U.S.C. § 1153(a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.")
- (7) An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).
- (8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:
- (A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.
- (B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the California Arts Council. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:
- 1. The benefits are needed to enable the alien to become self–sufficient following separation from the abuser.
- 2. The benefits are needed to enable the alien to escape the abuser and/ or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.
- 3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.
- 4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.

- 5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
- 6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).
- 7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
- 8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.
- 9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.
- (C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:
- 1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(ii), (iii) or (iv)),
- 2. classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(ii) or (iii)),
- 3. suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (8 U.S.C. § 1254) as in effect prior to April 1, 1997 [Pub. L. 104–208. § 501 (effective September 30, 1996, pursuant to sec. 591); Pub. L. 104–208. Sec. 304 (effective April 1, 1997, pursuant to sec. 309); Pub. L. 105–33, sec. 5581 (effective pursuant to sec. 5582)] (incorrectly codified as "cancellation of removal under section 240A of such Act [8 U.S.C.S. sec. 1229b] (as in effect prior to April 1, 1997)",
- 4. status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(i)) or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(i)), or
- 5. cancellation of removal pursuant to section 240A(b)(2) of the INA (8 U.S.C. § 1229b(b)(2)).
- (D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.
- (9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D) and (E) below:
- (A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.
  - (B) The alien did not actively participate in such battery or cruelty.
- (C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the California Arts Council. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:
- 1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.
- 2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.

- 3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.
- 4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.
- 5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
- 6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).
- 7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
- 8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.
- 9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.
  - (D) The alien meets the requirements of subsection (c)(8)(C) above.
- (E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.
- (10) An alien child who meets all of the conditions of subparagraphs (A), (B), and (C) below:
- (A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.
- (B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the California Arts Council. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:
- 1. The benefits are needed to enable the alien child's parent to become self–sufficient following separation from the abuser.
- 2. The benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser.
- 3. The benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser.
- 4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons.
- 5. The benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
- 6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g.,

- inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).
- 7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
- 8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children.
- 9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser.
- (C) The alien child meets the requirements of subsection (c)(8)(C) above.
- (d) For purposes of this section, "nonimmigrant" is defined the same as in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)).
- (e) For purposes of establishing eligibility for individual contract grants pursuant to Section 8753, Government Code, all of the following must be met:
- (1) The applicant must declare himself or herself to be a citizen of the United States, a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The applicant shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits," Form CAC 272 (Edition 3/98), which is hereby incorporated by reference.
- (2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Services (INS) which serve as reasonable evidence of the applicant's declared status.
- (3) The applicant must complete and sign Form CAC 272 (Edition 3/98)
- (4) Where authorized by the INS, the documentation presented by an alien as reasonable evidence of the alien's declared immigration status must be submitted to the INS for verification through the Systematic Alien Verification for Entitlements (SAVE) system procedures as follows:
- (A) Unless the primary SAVE system is unavailable for use, the primary SAVE system verification must be used to access the biographical/immigration status computer record contained in the Alien Status Verification Index maintained by the INS. Subject to subparagraph (B), this procedure must be used to verify the status of all aliens who claim to be qualified aliens and who present an INS–issued document that contains an alien registration or alien admission number.
- (B) In any of the following cases, the secondary SAVE system verification procedure may be used to forward copies of original INS documents evidencing an alien's status as a qualified alien, as a nonimmigrant alien under the INA, or as an alien paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for less than one year:
  - 1. The primary SAVE system is unavailable for verification.
- 2. A primary check of the Alien Status Verification Index instructs the California Arts Council to "institute secondary verification."
- 3. The document presented indicates immigration status but does not include an alien registration or alien admission number.
- 4. The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.
  - 5. The document is suspected to be counterfeit or to have been altered.
- 6. The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.
- 7. The document is a fee receipt from INS for replacement of a lost, stolen, or unreadable INS document.
- 8. The document is one of the following: an INS Form I–181b notification letter issued in connection with an INS Form I–181 Memorandum of Creation of Record of Permanent Residence, an Arrival–Departure Record (INS Form I–94) or a foreign passport stamped "PROCESSED

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FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for individual contract grants.

- (5) Where verification through the SAVE system is not available, if the documents presented do not on their face reasonably appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the document shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The California Arts Council shall request verification by the INS by filing INS Form G–845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation.
- (6) If the INS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien, a nonimmigrant or alien paroled for less than one year under section 212(d)(5) of the INA, the INS verification shall be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, a nonimmigrant or an alien paroled for less than one year under section 212(d)(5) of the INA, benefits shall be denied and the applicant notified pursuant to the individual contract grants regular procedures of his or her rights to appeal the denial of benefits.
- (7) Provided that the alien has completed and signed Form CAC 272 (Edition 3/98) under penalty of perjury, eligibility for individual contract grants shall not be delayed, denied, reduced or terminated while the status of the alien is verified.
- (f) Pursuant to Section 432(d) of the PRWORA (8 U.S.C. § 1642(d)), a nonprofit charitable organization that provides federal, state, or local public benefits shall not be required to determine, verify, or otherwise require proof of eligibility of any applicant or beneficiary with respect to his or her immigration status or alienage.
- (g) Nothing in this section shall be construed to withdraw eligibility for any applicable exception, under section 411(b) of the PRWORA, 8 U.S.C. § 1621(b).
- (h) Pursuant to Section 434 of the PRWORA (8 U.S.C. § 1644), where the California Arts Council reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.
- (i) Any applicant who is determined to be ineligible pursuant to subsection (b) and (e) or who was made eligible for individual contract grants whose services are terminated, suspended, or reduced pursuant to subsections (b) and (e), is entitled to a hearing, pursuant to appropriate authority for administrative review of decision on eligibility for state public benefit.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code; 8 U.S.C. Sections 1621, 1641 and 1642.

#### HISTORY

 New section filed 3–20–98 as an emergency; operative 3–20–98 (Register 98, No. 12). A Certificate of Compliance must be transmitted to OAL by 7–20–98

- or emergency language will be repealed by operation of law on the following
- 2. New section refiled, including amendment of Note, 6–15–98 as an emergency; operative 7–21–98 (Register 98, No. 25). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
- 3. Certificate of Compliance as to 6–15–98 order transmitted to OAL 10–6–98 and filed 11–17–98 (Register 98, No. 47).

#### Article 9. Funding Amounts

#### § 3632. Funding Amounts.

For those organizations or individual artists whose grant or contract has been approved, the California Arts Council shall notify the applicant of the funding amount recommended by the peer review panel or allowed within the program instructions. (Section 3628(a)). Applicants may or may not receive the full amount requested. The California Arts Council shall set funding amounts for grants or contracts based on the following factors.

- (1) Annual state budget.
- (2) Total dollars requested by recommended fundable applications.
- (3) Number of fundable projects.

NOTE: Authority cited: Section 8753, Government Code. Reference: Sections 8753 and 8753.5, Government Code.

#### HISTORY

1. Repealer and new section filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

#### Article 10. California Arts Council Goals

#### § 3636. California Arts Council Goals.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Repealer filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

#### **Article 11. General State Requirements**

#### § 3640. General State Requirements.

- (a) The following requirements, in addition to any special conditions incorporated in the California Arts Council Funding Criteria shall be applicable to and binding upon recipients of awards from the California Arts Council.
- (1) Those awards which consist in whole or in part of Federal funds shall be made only to organizations which do not use Federal funds as part of their match.
- (2) Applicants shall not use Federal funds to match Federal funds. NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Amendment filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

#### § 3644. Project Defined.

NOTE: Authority cited: Section 8753, Government Code. Reference: Section 8753, Government Code.

#### HISTORY

1. Repealer filed 3-4-91; operative 4-3-91 (Register 91, No. 14).

Barclays Official

# CALIFORNIA CODE OF REGULATIONS

## Title 2. Administration

**Division 3. State Property Operations** 

Chapter 3. California Museum of Science and Industry

Vol. 3



## Chapter 3. California Museum of Science and Industry

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## Chapter 3. California Museum of Science and Industry

#### Article 1. General

#### § 4000. Definitions.

For the purpose of these regulations, the following words and phrases are defined and shall be construed as hereinafter set out unless it shall be apparent from the context that they have a different meaning.

- (a) "Directors of board" shall name the Board of Directors of the California Museum of Science and Industry.
- (b) "Association" means the Sixth District Agricultural Association, a state institution, now known as the California Museum of Science and Industry.
- (c) "Park" shall include all driveways, paths or any of the grounds of the California Museum of Science and Industry; including that area leased to the Coliseum Commission, the City of Los Angeles, the County of Los Angeles or any department or part of the government of the State of California.
- (d) "Park" is synonymous with Exposition Park and includes area owned by the California Museum of Science and Industry bounded on the north by Exposition Boulevard, on the east by Figueroa, on the south by Santa Barbara and on the west by Vermont Avenue and excepting therefrom any areas not owned by the California Museum of Science and Industry.
- (e) "Police officer" shall mean every officer of the California State Police and the Museum Security Officers of the California Museum of Science and Industry.
  - (f) "Shall" is mandatory and "may" is permissive.

NOTE: Authority cited for Article 1 (Sections 4000 through 4012): Section 3965, Food and Agricultural Code.

#### HISTORY

- 1. New Sections 4000 through 4012 filed 3–28–60 as an emergency; effective upon filing (Register 60, No. 7.) For history of Chapter 3, see Register 60, No. 2.
- Certificate of Compliance—Section 11422.1, Gov. Code, filed 7–5–60 (Register 60, No. 15).
- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).

#### § 4001. Soliciting.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4002. Lingering or Loitering.

#### HISTORY

 Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4003. Lingering or Loitering After Ordered to Leave.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4004. Obstructions.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4005. Dogs.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4006. Games.

#### HISTORY

- 1. Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No.
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4007. Bicycles.

The riding of bicycles in the park is prohibited except in and upon that portion of the park used by vehicular traffic.

## § 4008. Flower Beds, Lawns, Terraces and Other Structures.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4009. Handbills and Circulars.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4010. Fountains and Ponds.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4011. Landing of Helicopter.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 4012. Deposit of Offensive Matter, Rocks or Dirt.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### Article 2. Traffic

#### § 5000. Definitions.

NOTE: Authority cited: Section 3965, Food and Agricultural Code. Reference: Sections 21113 and 22659, Vehicle Code.

#### HISTORY

- New Chapter 3 (§§ 5000 through 5064) filed 1–18–60; effective thirtieth day thereafter (Register 60, No. 2).
- Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 3. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5001. Driving and Parking Vehicles in the Park—General.

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5002. Boulevard Stops in the Park.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5003. Speed of Vehicles in the Park.

#### HISTORY

- 1. Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5004. Standing or Parking of Vehicles in the Park.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5005. Crosswalks in the Park.

#### HISTORY

- 1. Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26.)

#### § 5006. Parking Area.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5007. Driving in the Parking Area.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5008. U-Turn.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5009. Driving over a Double Line.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5010. Driving Under the Influence of Liquor or Narcotics.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5011. Driver's License.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5012. Removal of Debris from Accidents.

The driver of any vehicle which is involved in any collision shall remove or cause to be removed all glass and other debris which may have fallen on any roadway as a result of such collision from such roadway or parking area before leaving the place of the collision, and every person hired or employed to move or remove any such vehicle shall remove all glass and other debris which may have fallen upon the roadway or parking area as a result of the collision in which the vehicle was involved before removing the vehicle.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

1. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5013. Authorized Emergency Vehicles.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5014. Citations and Arrests.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5015. Presumption of Validity of Signs, Devices, Signals and Markings.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5016. Driving on the Right.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5017. Passing a Stopped Car at a Crosswalk.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5018. Driving in a Parking Area.

No person shall enter any parking area except at places marked "entrance" nor leave such area except at the places marked "exit," unless the contrary shall be established by competent evidence. The Museum may, when it is necessary, determine if the movement of traffic will be expedited and thereby designate:

- (a) Places where vehicles may or may not be parked.
- (b) Period of time for which vehicles may be parked at any place and display appropriate signs giving notice thereof.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5019. Parking Time Limitations.

- (a) Stopping or Standing Prohibited.
- (1) Whenever authorized signs are in place giving notice that stopping or standing is prohibited during such hours or on such days as are indicated on such signs, it shall be unlawful for any person to stop or stand or park any vehicle at any time and during such hours or such days.
  - (b) Parking Prohibited.
- (1) Whenever authorized signs are in place giving notice that parking is prohibited at any time or during certain hours, it shall be unlawful for any person to park any vehicle during such prohibited times.
  - (c) Parking Time Limits.
- (1) Whenever authorized signs are in place giving notice thereof, it shall be unlawful for any person to stop or stand or park any vehicle for a period of time in excess of the parking time limit indicated by such signs

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

1. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41)

#### § 5020. All Night Parking Prohibited.

No persons shall stop, stand or park a vehicle overnight on any driveway, path, road, or any grounds of the Museum.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5021. Unlawful Parking, Peddlers, Vendors.

(a) No persons shall stop, stand or park any vehicle, wagon, or push cart for the purpose of peddling, hocking, displaying or offering for sale

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therefrom any goods, wares, merchandise, or any fruit, vegetables, drinks or food stuffs on any path, driveway, roadway or any grounds of the park without the express written permission of the board. Said permit must designate the specific location at which such vehicle, wagon or push cart may stand and shall be conspicuously displayed at all times.

- (b) No person shall park or stand any vehicle or wagon used for any or intended to be used in the transportation of property for hire on any street, path, driveway, roadway or on any grounds in the park while awaiting patronage for such vehicle or wagon without first obtaining a written permit to do so from the board, which permit shall designate the specific location where such vehicle may stand.
- (c) No person shall stand or park a vehicle upon any pass or roadway or public parking area for the purpose of displaying such vehicle for sale by sign or otherwise.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

1. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5022. Temporary Signs.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5023. Authorization to Place Curb Marks for Signs, No Stopping, Standing or Parking.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5024. Establishment of Passenger, Commercial, Short Time Limit and No Stopping Curb Zone.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5025. Marking and Parking for Zones.

- (a) No stopping zones when designated by painted curbs and signs shall be red and stenciled bus zones. No person shall park any vehicle at any time adjacent to a curb marked in red Bus zones shall be red and stenciled bus zones.
- (b) Short time parking zones when designated by painted curbs shall be green and stenciled with the time limit allowed for parking. No person shall park any vehicle adjacent to a curb marked in green for any period in excess of the posted time limit.
- (c) Commercial loading zones when designated by painted curbs shall be yellow and stenciled loading only. No persons shall park any vehicle other than a commercial vehicle adjacent to any yellow curb nor any commercial vehicle adjacent to such curb for any greater length of time than is actually necessary for the loading or unloading of materials. A curb marked in yellow should indicate a loading zone for commercial vehicles only.
- (d) Passenger loading zones when designated by painted curb shall be white and stenciled passenger loading zone only. No person shall park any vehicle other than a private passenger automobile adjacent to any white curb and shall not park any vehicle for any greater period of time than is actually necessary for the loading or unloading of passengers and personal baggage.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

 New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41)

#### § 5026. Parking in the Parking Area.

No persons shall park any vehicle in the public parking area except between the painted lines indicating where such vehicle shall be parked. No persons shall so park a vehicle as to occupy or use more than one such marked parking space. No person shall remove a vehicle from any public parking area without first paying all fees or charges due for the use of such parking space.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

 New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5027. Parallel and/or Angle Parking.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5028. Designated Parking Area.

Unless otherwise directed by the Museum or the California State Police, no person shall stop, park or leave standing any vehicle on any road, path or driveway or any parking area unless this vehicle is parked, stopped, or left standing in areas designated for parking and in conformance with such signs as may be posted on said grounds from time to time.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5029. Parking Permits.

Parking permits shall be issued by the Museum under such conditions as may be described by the board. Said parking permits shall be subject to revocation or suspension at any time. No persons hall stop, park or leave standing any vehicle on the authority of said parking permit unless such vehicle is parked, stopped or left standing in the area designated for such parking by permit and in conformance with such signs as may be posted on said parking area from time to time. Said parking permits shall expire as indicated on said permit.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5030. Installation of Parking Meters Authorized.

#### HISTORY

- 1. Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13)
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5031. Parking Meter Spaces to Be Indicated and Maintained.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5032. Time of Parking in Parking Meter Zones.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

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#### § 5033. Parking Meters, Times for Operations.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5034. Operation of the Parking Meter.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5035. Parking Meters, Deposit of Coins.

When the operator of a vehicle parks this vehicle within a parking meter space on path, roadways or grounds of the park, the operator shall immediately deposit or cause to be deposited in the parking meter adjacent to such space lawful money of the United States of the rates determined by the Museum from time to time and indicated by signs around the parking meter.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- New NOTE filed 10–8–85; effective thirtieth day thereafter (Register 85, No. 41).

## § 5036. Parking Meters and Parking Meter Standards Not to Be Used for Certain Purposes.

#### HISTORY

 Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5037. Improper Use or Misuse of Meters.

#### HISTORY

 Order of repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5038. Extending Parking Time.

It shall be unlawful for any person to deposit or cause to be deposited in a parking meter any coins for the purpose of increasing or extending the parking time of any vehicle beyond the legal parking time which has been established by the board for the parking space adjacent to which the meter is placed.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

New NOTE filed 10–8–85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5039. Failure to Deposit Coins.

It shall be unlawful for any person to park or to cause, allow, permit or suffer to be parked a vehicle in any parking meter space without immediately depositing or causing to be deposited a coin or coins in the parking meter as hereinbefore provided. It shall be unlawful for any person to cause, allow, permit or suffer any vehicle to remain in any parking meter space for more than the time indicated by proper signs placed on such parking meters indicating the maximum parking time allowed in such parking meter space or during any time the parking meter is indicating that time has elapsed for which coins of the United States of America may have been deposited in said parking meter provided, however, that the provisions of this section shall not apply to any vehicle described in Section 21055, emergency vehicles exempt herefrom.

NOTE: Authority cited: Section 3965(c), Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5040. Installation of Off-Street Parking Meters.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5041. Off-Street Parking Meter Spaces to Be Indicated and Maintained.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5042. Time of Parking in Off-Street Parking Meter Zones.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5043. Off-Street Parking Meters. Times for Operation.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5044. Operation of Off-Street Parking Meters.

#### HISTORY

1. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5045. Off-Street Parking Meters, Deposit of Coins.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- Order of repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5046. Off-Street Parking Meters and Off-Street Parking Meter Standards Not to Be Used for Certain Purposes.

#### HISTORY

1. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5047. Improper Use of Off-Street Parking Meters.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5048. Extending Parking Time.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5049. Failure to Deposit Coins.

#### HISTORY

1. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5050. Manner of Direction of Traffic.

Police officers are authorized to direct all traffic by voice, hand or signal in conformance with traffic laws of the City of Los Angeles and the State of California provided that in the event of a fire or other emergency they may direct traffic as conditions may require notwithstanding the provisions of these regulations. No persons shall willfully fail or refuse to comply with any lawful order, direction or signal of a police officer.

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#### § 5051. Application to Public Employees.

#### HISTORY

 Order of repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5052. Exemption to Certain Vehicles.

Provisions of these regulations governing the operation, parking or standing of vehicles in the park and the adjacent parking facilities shall not apply to any vehicle of the police or fire department, any public ambulance, or any public utility vehicle, or any private ambulance which public utility vehicle or ambulance has qualified as an authorized emergency, when any vehicle mentioned in this section is operated in the manner specified in the Vehicle Code in response to an emergency call. The foregoing exemptions shall not, however, protect the driver of any vehicle of the consequences of his willful disregard of the safety of others. The provisions of these regulations governing the parking or standing of vehicles shall not apply to any vehicles of the city, county, state or federal government or public utility while necessary and used for construction or repair work or while engaged in the collection of garbage or noncombustible rubbish where compliance therewith would obstruct such operation or any vehicle owned by United States while in use for the collection, transportation or delivery of United States mail or to any vehicle owned or operated by the Department of Army, Department of Navy or Department of Air Force during periods of proclaimed national emergency.

#### § 5053. Barriers, Fences or Posts.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5054. Driving in Unauthorized Areas.

No vehicle shall be driven or parked in any area which has been landscaped or designated for landscaping or any cement walk or unpaved pathway for pedestrian use except for maintenance by an appropriate Museum employee or in an emergency.

#### HISTORY

 Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).

## § 5055. Sound Vehicles and Advertising Vehicles Prohibited.

No persons shall drive, operate or propel any sound or advertising vehicle with a soundmaking device or loud speaker thereof in use or operation upon any path, street, roadway or any grounds of the park without the express written permission issued by the Museum.

#### HISTORY

 Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).

#### § 5056. Installation of Automatic Parking Equipment.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5057. Automatic Parking Gates, Times for Operation.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5058. Operation of the Automatic Parking Gates.

#### **H**ISTORY

1. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5059. Automatic Parking Gates Not to Be Used for Certain Purposes.

#### HISTORY

1. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 5060. Improper Use or Misuse of the Automatic Parking Gate.

#### HISTORY

1. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

### § 5061. Failure to Deposit Coins in the Automatic Parking

It shall be unlawful for any person to park or to cause, permit or suffer to be parked a vehicle in any parking lot where ingress to said parking lot is governed by the operation of automatic parking gates without immediately depositing or causing to be deposited a coin or coins in the automatic parking gates.

NOTE: Authority cited: Sections 3965(c) and 4051, Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

1. New NOTE filed 10–8–85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 5062. Emergency Rules and Signs.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5063. Penalties.

#### HISTORY

- 1. Amendment filed 8–4–60; effective thirtieth day thereafter (Register 60, No. 17)
- Order of repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5064. "21113" Vehicles on Certain Property.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. Order of repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5065. Removal of Vehicles at Owner's Expense.

#### HISTORY

- 1. New section filed 9–26–60; effective thirtieth day thereafter (Register 60, No. 21)
- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 3. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 5066. One-Way Traffic.

No person shall operate or move a vehicle upon the driveways, paths or grounds of the park designated and sign posted for one—way traffic in a direction opposed to that indicated by the designation or signpost.

NOTE: Authority cited: Sections 3965(c) and 4051, Food and Agricultural Code. Reference: Section 21113, Vehicle Code.

#### HISTORY

- 1. New section filed 9–20–60 as an emergency; effective upon filing (Register 60, No. 20).
- Certificate of Compliance—Section 11422.1, Government Code, filed 1–17–61 (Register 61, No. 2).
- 3. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### Article 3. Admission Ticket Selling

#### § 6000. Definitions.

For the purpose of these regulations, the following words and phrases are defined and shall be construed as hereinafter set forth unless it shall be apparent from the context that they have a different meaning:

- (a) "Museum" means the California Museum of Science and Industry, a State institution.
- (b) "Directors or Board" means the Board of Directors of the California Museum of Science and Industry.
- (c) "Park" shall include all driveways, paths, parking lots or any of the grounds owned by the California Museum of Science and Industry, bounded on the north by Exposition Boulevard, on the east by Figueroa Street, on the south by Santa Barbara Avenue and on the west by Vermont Avenue, City and County of Los Angeles, State of California, excepting therefrom any area not owned by the California Museum of Science and Industry, but including that area leased to the Los Angeles Memorial Coliseum Commission, the City of Los Angeles, the County of Los Angeles or any department or part of the government of the State of California.
- (d) "Police Officer" shall mean every officer of the California State Police, as defined in Section 14613 of the Government Code, or the Los Angeles Police Department or any other peace officer, as defined in Section 830 et seq., of the Penal Code; and the Museum Security Officers of the California Museum of Science and Industry.
- (e) "Agent" shall mean a representative of the Intelligence Division, Internal Revenue Service, United States Treasury Department.
- (f) "Ticket Speculator" shall mean any person who engages in, manages, conducts, or carries on in or upon the grounds of the Park the sale of tickets of admission or other evidence of the right of entry to designated activities as defined in Section 4301 of the Food and Agricultural Code.
- (g) "Ticket Scalping" shall mean the sale of tickets to designated activities as defined in Section 4301 of the Agricultural Code, at any premium or price in excess of the maximum price printed or endorsed on said tickets, plus lawful taxes.
- (h) "Permit" shall mean a permit issued by the Board under Sections 3965 and 4301 of the Food and Agricultural Code.
- (i) "Permittee" shall mean any person licensed by the Board under Sections 3965 and 4301 of the Food and Agricultural Code.
- (j) "Person" shall mean a natural person, firm, corporation, association or partnership.
- (k) "Identification Card" shall mean a card issued by the Board containing, but not limited to, name of permittee, address of permittee, age, height, weight, permit number, effective date of permit, expiration date of permit, photograph of permittee, signatures of permittee and authorized representative of the Museum.
- (1) The provisions of this Article shall not be deemed to apply to a person, firm, corporation, association or partnership engaged in the business of selling tickets at a fixed and duly authorized ticket office and/or booth in the Park under jurisdiction and management of the Los Angeles Memorial Coliseum Commission, the City of Los Angeles, the County of Los Angeles or any department or part of the government of the State of California.

NOTE: Authority cited: Sections 3965(c) and 4051, Food and Agricultural Code. Reference: Section 4301, Food and Agricultural Code.

#### HISTORY

- 1. New Sections 6000 through 6006 filed 4–14–61 as an emergency; effective upon filing (Register 61, No. 8).
- Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 6–28–61 (Register 61, No. 13).
- 3. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- Amendment of NOTE filed 10–8–85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 6001. Matters of Public Interest.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 6002. Permit Required.

#### HISTORY

 Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13). 2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 6003. Requirements for Permit.

- (a) Applicant must file written application with Museum setting forth such information as Board may require in order to enable Museum to carry into effect the provisions of Section 4301 of the Food and Agricultural Code and regulations promulgated thereunder.
- (b) Said application shall be accompanied by evidence and proof satisfactory to Museum of the moral character of the applicant.
- (c) Applicant must secure, at his own expense, and file within 30 days after issuance of said permit, a bond in due form, approved by the Museum, payable to the people of the State of California and to the Museum, in the penal sum of \$2,500.00, with two or more sufficient sureties or a duly authorized surety company. Said bond shall be conditioned that the obligor will not be guilty of any fraud or extortion, will not violate directly or indirectly any of the provisions of Section 4301 of the Food and Agricultural Code or regulations promulgated thereunder, will comply with said statute and regulations and will pay any and all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit, or any unlawful act or omission of such obligor, his agents or employees, while acting within the scope of their employment in carrying on the sale of tickets for which such permit is granted. Failure to file said bond, as approved, within 30 day period, shall nullify, void, revoke and invalidate any permit issued under these regulations.
- (d) Applicant must secure, at his own expense, and file with the application therefor, evidence and proof satisfactory to the Museum, that applicant obtained from District Director of Internal Revenue, any and all necessary permits required under the provisions of Section 4234 of the United States Internal Revenue Code. Any such violator of said Code is subject to criminal prosecution in the United States District Court.
- (e) Each application for a permit shall be accompanied by two copies of the applicant's fingerprints made on forms provided by Museum. Fingerprints may be obtained through the Office of the California State Police, 1525 S. Broadway, Room 413, Los Angeles, CA 90015, or through any other law enforcement agency upon payment of prevailing cost therefor. Permit will not be issued until State Bureau of Criminal Identification and Investigation, Department of Justice, has reviewed said fingerprints and the findings thereof are satisfactory to the Museum.
- (f) Permit Fees. Each application must be accompanied by a fee of \$150.00 and shall be renewed upon the payment of a fee of \$75.00 annually. Payment must be made by cash, cashier's check, certified check or money order made payable to the Museum. No personal checks accepted. Since fee has been established to cover administrative costs and expenses including, but not limited to, character investigation, fingerprint check, inspection service, printing costs, material and supplies, labor costs, etc., refunds will not be made, in the event permit is not issued or permit is suspended, revoked or otherwise declared void.

NOTE: Authority cited: Sections 3965(c) and 4051, Food and Agricultural Code. Reference: Section 4301, Food and Agricultural Code.

#### HISTORY

- Amendment filed 3-30-78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 6004. Conditions of Permit.

- (a) Each permittee while acting as a "ticket speculator" engaged in "ticket scalping" shall have in his possession at all times an Identification Card. Said Card shall be made available, upon request, to any Police Officer, Agent, authorized representative of the Museum or to any person purchasing a ticket from said permittee.
- (b) Each permittee while acting as a "ticket speculator" engaged in "ticket scalping" or at any other reasonable time, shall maintain and keep a book of record and account containing the name, address, and telephone number, if any, of each person, firm, corporation, association, or partnership from whom any ticket is purchased, with respect to each ticket purchased, together with the full purchase price of each ticket, names and

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dates for performance of designated activities, seat location, date of purchase, and shall, upon request, make such book of record and account available to any Police Officer, Agent, authorized representative of the Museum or to the person purchasing such a ticket.

- (c) Each permittee while acting as a "ticket speculator" engaged in "ticket scalping" or at any other reasonable time, shall maintain and keep a book of record and account with respect to the sale of any ticket containing the name, address and telephone number, if any, of such person, firm, corporation, association or partnership purchasing said ticket, together with the price paid by said purchaser. Said book of record and account shall also include name and dates for performances of designated activities, seat location, date of sale and shall, upon request, make such book of record and account available to any Police Officer, Agent, authorized representative of the Museum for inspection and audit.
- (d) Each permittee shall furnish each purchaser of a ticket with a receipt showing, but not limited to, name and address of permittee, date of sale, description, location and quantity of tickets sold, price paid, name of purchaser, permit number and duly signed by permittee. A copy of each receipt issued shall be retained by permittee and upon request or a reasonable time thereafter, not to exceed 24 hours after request made, shall be made available for inspection and audit by authorized representatives of the Museum, Agents and Police Officers.
- (e) No permittee shall engage in "ticket scalping" nor permit any person in his employ to engage in "ticket scalping" in or upon the grounds of the Park other than the premises approved and permitted to be used for such purpose by such permittee and subject to the following further restrictions:
- (1) At no time shall permittee or any person in his employ engage in "ticket scalping" in or upon any grounds of the Park where a person may drive, stop, park or leave standing any vehicle so as to hinder or obstruct free and orderly flow of traffic.
- (2) At no time shall permittee or any person in his employ engage in "ticket scalping" within five hundred (500) feet of the nearest fixed and duly authorized ticket office and/or booth in the Park under jurisdiction and management of the Los Angeles Memorial Coliseum Commission, the City of Los Angeles, the County of Los Angeles or any department or part of the government of the State of California.
- (3) No permittee shall stand or sit in or upon the grounds of the Park in any manner so as to hinder or obstruct the free passage of pedestrians thereon, or to annoy or molest such pedestrians.
- (f) No permittee shall employ any person to engage in "ticket scalping" unless such person has been properly permitted to engage in such "ticket scalping" in accordance with the provisions of Section 4301 of the Food and Agricultural Code and these regulations.

- (g) Notwithstanding anything herein contained to the contrary, no permittee shall engage in the practice of directing, guiding, influencing or engage others to direct, guide, influence or solicit prospective patrons of said sports stadia, arena, pavilion, places of public exhibitions and other designated activities, or induce or solicit or attempt to induce or solicit the purchase of tickets from them by said prospective patrons in or upon the grounds within the Park.
- (h) Each permittee while engaged in "ticket scalping" shall comply with any order or resolution as may be adopted from time to time by the Board of the Museum or any other public agency or commission that may have jurisdiction over location where said "ticket scalping" is requested to take place.

NOTE: Authority cited: Sections 3965(c) and 4051, Food and Agricultural Code. Reference: Section 4301, Food and Agricultural Code.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 6005. Misstatement in Application.

No person shall make any false, misleading or fraudulent statement or misrepresent any fact in any application for a permit or in any notice of record required to be filed with the Museum, City, County, State or Federal Government; such conduct shall be grounds for suspension or revocation of any permit issued to such person.

NOTE: Authority cited: Sections 3965(c) and 4051, Food and Agricultural Code. Reference: Section 4301, Food and Agricultural Code.

#### HISTORY

- 1. Amendment filed 3–30–78 as procedural and organizational; effective upon filing (Register 78, No. 13).
- 2. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

#### § 6006. Suspension and Revocation.

In the event that any permittee shall be guilty of any fraud or misrepresentation or otherwise violate any of the provisions of these rules and regulations, such violations shall be deemed sufficient cause for suspension or revocation of the offender's permit on giving five (5) days' notice by mail to such permittee. This Section shall not be deemed or construed as prohibiting such permittee from answering the charges made against him.

NOTE: Authority cited: Sections 3965(c) and 4051, Food and Agricultural Code. Reference: Section 4301, Food and Agricultural Code.

#### HISTORY

1. New NOTE filed 10-8-85; effective thirtieth day thereafter (Register 85, No. 41).

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# Barclays Official CALIFORNIA CODE OF REGULATIONS

## Title 2. Administration

Division 4. Fair Employment and Housing Commission

Vol. 3



## Division 4. Fair Employment and Housing Commission

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§ 8103.	Requirement of Nondiscrimination		§ 8402.	Compliance Investigations.
3 0.103.	Program.		§ 8403.	Letters of Commitment.
§ 8104.				OCP Enforcement
§ 8106.	Prima Facie Compliance.		•	
§ 8107.				Proceedings 362
§ 8108.			§ 8500.	Scope.
§ 8109.			§ 8501.	Show Cause Notice.
§ 8112.	Contract Awarding Agency,		§ 8502.	Conciliation Agreements.
0112	Unresponsive Bids.		§ 8503.	Hearing.
§ 8113.	Statement of Compliance.		§ 8504.	Potential Remedies.

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# Division 4. Fair Employment and Housing Commission

### Chapter 1. Administration

### Subchapter 1. Administration

### § 7285.0. Generally.

The authority for the rules and regulations set forth in this chapter is briefly described at the beginning of each chapter below and in some cases is set out with more particularity at the beginning of a constituent subchapter within a chapter. Special definitions or rules of construction which only apply to a particular chapter or subchapter are set forth at the beginning of the chapter or subchapter to which they pertain.

NOTE: Authority cited: Section 1418(a), Labor Code; Section 35730.5(a), Health and Safety Code; and Section 12935(a), Government Code. Reference: Part 4.5 of Division 2, Labor Code; and Part 2.8 of Division 3 of Title 2, Government Code.

HISTORY

1. New Division 4, Chapter 1 (Subchapters 1 and 2, Sections 7285.0–7285.7, not consecutive) and Chapter 2 (Subchapters 1–9, Sections 7286.3–7294.2, not consecutive) filed 4–1–80; effective thirtieth day thereafter (Register 80, No. 14). For prior history, see Registers 76, No. 44 and 61, No. 26.

### § 7285.1. Construction.

- (a) These rules and regulations are to be construed liberally so as to further the policy and purposes of the statutes which they interpret and implement.
- (b) Except as required by the Supremacy Clause of the United States Constitution, federal laws and their interpretations regarding discrimination in employment and housing are not determinative of the construction of these rules and regulations and the California statutes which they interpret and implement but, in the spirit of comity, shall be considered to the extent practical and appropriate.
- (c) Unless the context dictates otherwise, terms used herein which are in the singular include the plural and which are in the plural include the singular
- (d) If any rule or regulation, or portion thereof, in this chapter is adjudged by a court of competent jurisdiction to be invalid, or if any such rule or regulation, or portion thereof, loses its force and effect by legislative action, that judgment or action does not affect the remainder of the rules and regulations.
- (e) Pursuant to the Governor's Reorganization Plan No. 1 (1980), the Fair Employment Practice Act is to be renamed the Fair Employment and Housing Act and renumbered in Part 2.8 of Division 3 of Title 2 of the Government Code. Authorities and references cited herein to the Labor Code are parenthetically cited to sections of the Government Code which will become applicable when legislation is enacted.

NOTE: Authority cited: Section 1418(a), Labor Code; and Section 12935(a), Government Code. Reference: Part 4.5 of Division 2, Labor Code; and Part 2.8 of Division 3 of Title 2 of the Government Code.

### § 7285.2. Definitions.

Unless a different meaning clearly applies from the context, the meaning of the words and phrases as defined in this section shall apply throughout this chapter:

- (a) "Commission or FEHC" means the State Fair Employment and Housing Commission created by section 1414 of the Labor Code and Section 12903 of the Government Code pursuant to the Governor's Reorganization Plan No. 1 (1980).
- (b) "Department or DFEH" means the Department of Fair Employment and Housing created by section 1413.1 of the Labor Code and Sections 12901 and 12925 of the Government Code pursuant to the Governor's Reorganization Plan No. 1 (1980).
- (c) "Person" includes one or more individuals, partnerships, associations or corporations, legal representatives, trustees in bankruptcy, or receivers.
- (d) "Complainant" means the person who files a timely, verified complaint with the DFEH alleging aggrievement by an unlawful practice.
- (e) "Respondent" means the person who is alleged to have committed an unlawful practice in a complaint filed with the DFEH, or against whom an accusation has been issued.

(f) "Act" means the California Fair Employment and Housing Act created by section 1410 seq. of the Labor Code, sections 35700 et seq. of the Health and Safety Code and Government Code section 12900 Note: Authority cited: Section 1418 (a), Labor Code; and Section 12935(a), Government Code. Reference: Sections 1413, 1413.1 and 1414, Labor Code; and Sections 12903 and 12925, Government Code.

# Subchapter 2. Powers and Duties of the Commission

### § 7285.3. Staff.

(a) Responsible to the Fair Employment and Housing Commission there shall be an Executive and Legal Affairs Secretary and such legal, professional, administrative and support staff as are necessary to carry out the day-to-day responsibilities of the Commission.

NOTE: Authority cited: Section 1418(a), Labor Code; Section 35730.5(a), Health and Safety Code; and Section 12935(a), Government Code. Reference: Section 1418(b), (c), (d), (e), and (f), Labor Code; and Section 12935(b), (c), (d), (e), and (f), Government Code.

#### HISTORY

1. Amendment filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).

### § 7285.4. Rules, Regulations and Guidelines.

- (a) The Commission shall adopt, promulgate, amend and rescind suitable rules, regulations and guidelines as are necessary to interpret, implement and apply laws within its jurisdiction and as are necessary to carry out all of its other functions and duties.
- (b) All rules and regulations shall be adopted pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

NOTE: Authority cited: Section 1418(a), Labor Code; Section 35730.5(a), Health and Safety Code; and Section 12935(a), Government Code. Reference: Part 4.5 of Division 2, Labor Code; and Part 2.8 of Division 3 of Title 2, Government Code.

### § 7285.5. Hearings and Precedential Opinions.

- (a) The Commission shall hold hearings and issue findings and orders on accusations of unlawful practices within the Commission's jurisdiction filed by the Department, including charges of discrimination in employment, housing, public accommodation, contract compliance, and licensing and testing.
- (b) All hearings after accusation shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (known as the California Administrative Procedure Act) and pursuant to Title 2, Division 4, Chapter 4 of the California Administrative Code ("Procedures of the Commission").
- (c) The Commission shall establish and publish a system of precedential opinions to assist in interpreting the laws under its jurisdiction.
- (d) The Commission shall establish a system and procedure for Declaratory Rulings regarding any rule or statute enforceable by the Commission, and shall make such rulings available to the public.

NOTE: Authority cited: Section 1418(a), Labor Code; Section 35730.5(a), Health and Safety Code; and Section 12935(a), Government Code. Reference: Section 1418(b), (f) and (h), Labor Code; Section 35730.5(b), (f), and (h), Health and Safety Code; and Sections 12935(b), (f) and (h), 12967 and 12981, Government Code.

### HISTORY

- Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- Amendment of subsection (b) filed 12–17–82; effective thirtieth day thereafter (Register 82, No. 52).

### § 7285.6. Investigative Authority.

Where necessary to carry out its duties relating to any matter under investigation or in question before the Commission, the Commission may hold hearings, subpoena witnesses, compel witnesses' attendance, order production of any books and papers relating to an investigation, administer oaths, and examine any person under oath at times and places set by the Commission, and make other related written and oral inquiries.

NOTE: Authority cited: Section 1418(a), Labor Code; Section 35730(a), Health and Safety Code; and Section 12935(a), Government Code. Reference: Section 1418(f) and 1424, Labor Code; Sections 35730.5(f) and 35732, Health and Safety Code; and Sections 12935(f), 12967 and 12981, Government Code.

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7285.7. Other Powers and Duties.

The functions, powers and duties of the Commission shall also include, but are not limited to, the authority to:

- (a) Make inquiries into general discrimination problems and issue informal and formal findings, including published reports:
- (b) Establish such advisory agencies and councils as will assist in fostering goodwill, cooperation and conciliation among groups and elements of the population of the state through studies, conciliation, hearings, and recommendations to the Commission;
- (c) Develop standards and policy for application and implementation by the Department of Fair Employment and Housing; and
- (d) Advise and concur with the Secretary of Health and Welfare in establishing standards and guidelines determining unlawful practices of state contractors under Section 11135, et seq.

NOTE: Authority cited: Section 1418(a), Labor Code; and Section 12935(a), Government Code. Reference: Sections 1418, 1420.4 and 1431, Labor Code; and Sections 12935, 12946 and 12990, Government Code.

### Chapter 2. Discrimination in Employment

### Subchapter 1. General Matters

### § 7286.0. Fair Employment and Housing Commission—Conflict of Interest Code.

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached appendix in which officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the Fair Employment and Housing Commission.

Designated employees shall file statements of economic interests with their agency. Upon receipt of the statements of the Commission members, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. The statements for all other designated positions shall be retained with the agency and made available for public inspection and reproduction upon request. (Gov. Code section 81008).

Appendix A

Designated Positions	Disclosure Category
Commission Members	1
Executive and Legal Affairs Secretary	1
Administrative Law Judge	1
FEH Counsel	1
Staff Services Manager	2
Consultants <sup>1</sup>	1

<sup>1</sup>With respect to Consultants, the Chairperson may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chairperson's determination is a public record and shall be retained for public inspection at offices of the Fair Employment and Housing Commission. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

### Appendix B

General Provisions

When a designated employee is required to disclose investments and sources of income, he or she need only disclose investments in business entities and sources of income which do business in the jurisdiction, plan to do business in the jurisdiction or have done business in the jurisdiction within the past two years. In addition to other activities, a business entity is doing business within the jurisdiction if it owns real property within the jurisdiction. When a designated employee is required to disclose interests in real property, he/she need only disclose real property which is lo-

cated in whole or in part within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the Fair Employment & Housing Commission.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in appendix A.

Disclosure Categories

Category 1

Designated officials and employees assigned to this disclosure category must report all investments and business positions in business entities, sources of income and interests in real property.

Category 2

Designated officials and employees assigned to this disclosure category must report investments and business positions in business entities and sources of income of the type which within the past two years have contracted to provide services, supplies, materials or equipment to the Department.

NOTE: Authority and reference cited: Section 81000 et seq., Government Code.

- 1. New section filed 6-6-83; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 4-18-83. (Register 83, No. 24).
- Change without regulatory effect amending section and appendix filed 6–4–91 pursuant to section 100, title 1, California Code of Regulations; operative 7–4–91. Approved by Fair Political Practices Commission 5–1–91 (Register 91, No. 35).
- 3. Editorial correction restoring inadvertently omitted Authority and Reference cites (Register 95, No. 6).
- Amendment of Appendix A filed 6–28–95; operative 7–28–95. Submitted to OAL for printing only pursuant to Government Code section 11346.2. Approved by Fair Political Practices Commission 5–11–95 (Register 95, No. 26).
- 5. Amendment of Appendix A filed 8-29-2001; operative 9-28-2001. Approved by Fair Political Practices Commission 7-16-2001 (Register 2001, No. 35).
- 6. Amendment of Appendix A filed 7–6–2005; operative 8–5–2005. Approved by Fair Political Practices Commission 4–25–2005 (Register 2005, No. 27).

### § 7286.1. Department of Fair Employment and Housing—Conflict of Interest Code.

The Political Reform Act, Government Code sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs., Section 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings. Therefore, the terms of California Code of Regulations, title, 2. section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the conflict of interest code of the Department of Fair Employment and Housing.

Designated employees shall file statements of economic interests with their agency which shall be retained with the agency and made available for public inspection and reproduction upon request (Gov. Code Section 81008). Upon receipt of the statement of the Director, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

### Appendix A

Designated Positions	Disclosure Category
Accountant I (Specialist)	2
Administrator I. FEH	ĺ
Administrator II, FEH	1
Business Service Officer I (Specialist)	2
Business Service Officer I (Supervisor)	2
CEA	1
Level 1	
Level 2	
Level 3	
Chief Counsel I, CEA	1
Chief Deputy Director, DFEH	1
Data Processing Manager II	2
Deputy Director, Legislation and Policy	1
Development	
Deputy Director, Public Affairs and External	1
Communications	

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Designated Positions	Disclosure Category
Director FEH Consultant I Range A	1
Range B Range C FEH Consultant II FEH Consultant III (Specialist)	1
FEH Consultant III (Supervisor) FEH Counsel Range A Range B	1
Range C Range D Graduate Student Assistant	1
Range A Range B Range C	
Range D Information Systems Technician Legal Analyst	2 1
Legal Assistant Programmer I Senior Accounting Officer (Supervisor) Senior FEH Counsel (Specialist)	2 1 1 2 2
Senior FEH Counsel (Supervisor) Senior Legal Analyst Senior Programmer Analyst (Specialist)	1 1
Staff Information Systems Analyst (Supervisor) Staff Programmer Analyst (Specialist) Staff Services Manager I	2 2 2 1
Staff Services Manager II (Managerial) Staff Services Manager II (Supervisory) Staff Services Manager III	1 1 1

### Appendix B

### General Provisions

When a designated employee is required to disclose investments and sources of income, he or she need only disclose investments in business entities and sources of income which do business in the jurisdiction, plan to do business in the jurisdiction or have done business in the jurisdiction within the past two years. In addition to other activities, a business entity is doing business within the jurisdiction if it owns real property within the jurisdiction. When a designated employee is required to disclose interests in real property, he/she need only disclose real property which is located in whole or in part within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the Department of Fair Employment and Housing.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in Appendix A.

Disclosure Categories

Category 1

Designated officials and employees assigned to this disclosure category must report all investments and business positions in business entities, sources of income, including gifts, loans, and travel payments, and interests in real property.

Category 2

Designated officials and employees assigned to this disclosure category must report investments and business positions in business entities and sources of income, including gifts, loans, and travel payments, of the type which, within the past two years, have contracted to provide services, supplies, materials or equipment to the Department.

NOTE: Authority and reference cited: Section 81000 et seq., Government Code. (Section filed 6–6–83, operative 7–6–83; approved by Fair Political Practices Commission 4–18–83; Register 83, No. 24).

### HISTORY

 Amendment of Appendices A and B filed 10–3–86, operative 11–3–86 making the following changes:

Appendix A, Disclosure Category 1: deleted "Assistant to the Director," "All Legal Classes," "Staff Services Manager I, Contract Compliance" and "Consultants"; added "Chief Deputy Director," "Deputy Director, Administrative Services," "Deputy Director, Legal Services," "Manager Public Information and Legislation," "Staff Services Managers I, II, III" and "Special Consultants"; substituted "Enforcement" for "Field Operations";

Appendix A, Disclosure Category 2: deleted "Staff Services Manager III," "Staff Services Manager I, all others" and "Staff Programmer Analyst"; added "FEH Counsel I, II, III";

Appendix A, Disclosure Category 4: deleted "Research Analyst" and "Housing Program Specialist"; added "Compliance Services: All Professional Classifications".

Appendix A, Footnote 1: Added "Special" after "With respect to";

Appendix B, General Provisions: deleted "within the past two years" after "in the jurisdiction";

Appendix B, Disclosure Category 1: added ": (1)" after "must report" and "; and (2) his or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity of the type which has contracted with DFEH to provide services, supplies, materials, machinery or equipment" after "real property";

Appendix B, Disclosure Category 2: deleted "within the past two years" after "of the type which"; added ": (1)" after "must report" and "; and (2) his or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity of the type which has contracted with DFEH to provide services, supplies, materials, machinery or equipment" after "to the Department"; Appendix B, Disclosure Category 3: deleted "within the past two years" after "of the type which"; added ": (1)" after "must report" and "; and (2) his or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity of the type which has contracted with DFEH to provide services, supplies, materials, machinery or equipment" after "the employees' field office";

Appendix B, Disclosure Category 4: added ": (1)" after "must report" and "; and (2) his or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity of the type which has contracted with DFEH to provide services, supplies, materials, machinery or equipment" after "has been assigned";

Approved by Fair Political Practices Commission 8–12–86; (Register 86, No. 40).

- Change without regulatory effect amending Appendix A filed 1-3-92 pursuant to section 100, title 1, California Code of Regulations; operative 2-3-92. Approved by Fair Political Practices Commission 8-12-86. (Register 92, No. 11).
- 3. Editorial correction restoring inadvertently omitted Authority and Reference cites (Register 95, No. 6).
- Amendment of section and repealer and new Appendices A and B filed 5-9-2000; operative 6-8-2000. Approved by Fair Political Practices Commission 3-16-2000 (Register 2000, No. 19).
- Amendment of Appendices A and B filed 10-23-2003; operative 11-22-2003. Approved by Fair Political Practices Commission 6-23-2003 (Register 2003, No. 43).

### § 7286.3. Statement of Policy and Purpose.

The public policy of the State of California is to protect and safeguard the civil rights of all individuals to seek, have access to, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and age for individuals over forty years of age. Employment practices should treat all individuals equally, evaluating each on the basis of individual skills, knowledge and abilities and not on the basis of characteristics generally attributed to a group enumerated in the Act. The objectives of the California Fair Employment and Housing Act and these regulations are to promote equal employment opportunity and to assist all persons in understanding their rights, duties and obligations, so as to facilitate achievement of voluntary compliance with the law.

NOTE: Authority cited: Section 12935(a) and 12980, Government Code. Reference: Part 4.5 of Division 2, Labor Code; Part 5 of Division 24, Health and Safety Code. (Part 2.8 of Division 3 of Title 2, Government Code.)

### **HISTORY**

- Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- Change without regulatory effect amending section and NoTE filed 7-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

### § 7286.4. Authority.

The FEHC issues these regulations under the authority vested in the Commission by the Fair Employment and Housing Act, specifically Labor Code Section 1418(a) Government Code Section 12935(a)

NOTE: Authority cited: Section 1418(a), Labor Code; Section 35730(a), Health and Safety Code. (Section 12935(a), Government Code.) Reference: Part 4.5 of Division 2, Labor Code, Part 5 of Division 24, Health and Safety Code. (Part 2.8 of Division 3 of Title 2, Government Code.)

### § 7286.5. Definitions.

As used in this chapter, the following definitions shall apply unless the context otherwise requires:

- (a) "Employer." Any person or individual engaged in any business or enterprise regularly employing five or more individuals, including individuals performing any service under any appointment, contract of hire or apprenticeship, express or implied, oral or written.
- (1) "Regularly employing" means employing five or more individuals for each working day in any twenty consecutive calendar weeks in the current calendar year or preceding calendar year.
- (2) For purposes of "counting" the (five or more) employees, the individuals employed need not be employees as defined below; nor must any of them be full-time employees.
- (3) Any person or individual acting as an agent of an employer, directly or indirectly, is also an employer.
- (4) "Employer" includes the State of California, any political or civil subdivision thereof, counties, cities, city and county, local agencies, or special districts, irrespective of whether that entity employs five or more individuals.
- (5) A religious association or religious corporation not organized for private profit is not an employer under the meaning of this Act; any non-profit religious organization exempt from federal and state income tax as a non-profit religious organization is presumed not to be an employer under this Act. Notwithstanding such status, any portion of such tax exempt religious association or religious corporation subject to state or federal income taxes as an unrelated business and regularly employing five or more individuals is an employer.
- (6) "Employer" includes any non-profit corporation or non-profit association other than that defined in subsection (5).
- (b) "Employee." Any individual under the direction and control of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written.
- (1) Employee does not include an independent contractor as defined in Labor Code Section 3353.
- (2) Employee does not include any individual employed by his or her parents, by his or her spouse, or by his or her child.
- (3) Employee does not include any individual employed under special license in a non–profit sheltered workshop or rehabilitation facility.
- (4) An employment agency is not an employee of the person or individual for whom it procures employees.
- (5) An individual compensated by a temporary service agency for work to be performed for an employer contracting with the temporary service agency may be considered an employee of that employer for such terms, conditions and privileges of employment under the control of that employer. Such an individual is an employee of the temporary service agency with regard to such terms, conditions and privileges of employment under the control of the temporary service agency.
- (c) "Employment Agency." Any person undertaking for compensation to procure job applicants, employees or opportunities to work.
- (d) "Labor Organization." Any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers regarding grievances, terms or conditions of employment, or of providing other mutual aid or protection.
- (e) "Employer or Other Covered Entity." Any employer, employment agency, labor organization or apprenticeship training program as defined herein and subject to the provisions of the Act.
- (f) "Employment Benefit." Except as otherwise provided in the Act, any benefit of employment covered by the Act, including hiring, employment, promotion, selection for training programs leading to employment or promotions, freedom from disbarment or discharge from employment or a training program, compensation, provision of a discrimination–free

workplace, and any other favorable term, condition or privilege of employment.

- (1) For a labor organization, "employment benefit" includes all rights and privileges of membership, including freedom from exclusion, expulsion or restriction of membership, second class or segregated membership, discrimination in the election of officers or selection of staff, or any other action against a member or any employee or person employed by an employer.
- (2) "Employment benefit" also includes the selection or training of any person in any apprenticeship training program or any other training program leading to employment or promotion.
- (3) "Provision of a discrimination—free workplace" is a provision of a workplace free of harassment, as defined in Section 7287.6(b).
- (g) "Employment Practice." Any act, omission, policy or decision of an employer or other covered entity affecting any of an individual's employment benefits or consideration for an employment benefit.
- (h) "Applicant." Any individual who files a written application or, where an employer or other covered entity does not provide an application form, any individual who otherwise indicates a specific desire to an employer or other covered entity to be considered for employment. Except for recordkeeping purposes, "Applicant" is also an individual who can prove that he or she has been deterred from applying for a job by an employer's or other covered entity's alleged discriminatory practice. "Applicant" does not include an individual who without coercion or intimidation willingly withdraws his or her application prior to being interviewed, tested or hired.
- (i) "Apprenticeship Training Program." Any apprenticeship program, including local or state joint apprenticeship committees, subject to the provision of Chapter 4 of Division 3 of the California Labor Code, Sections 3070, et seq.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1413, 1420, 1420.1, 1420.15, Labor Code. (Sections 12925, 12940, 12941, 12942, Government Code.)

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7286.6. Principles of Employment Discrimination.

- (a) Unlawful Practices and Individual Relief. In allegations of employment discrimination, a finding that a respondent has engaged in an unlawful employment practice is not dependent upon a showing of individual back pay or other compensable liability. Upon a finding that a respondent has engaged in an unlawful employment practice and on order of appropriate relief, a severable and separate showing may be made that the complainant, complainants or class of complainants is entitled to individual or personal relief including, but not limited to, hiring, reinstatement or upgrading, back pay, restoration to membership in a respondent labor organization, or other relief in furtherance of the purpose of the Act.
- (b) Liability of Employers. In view of the common law theory of *respondeat superior* and its codification in California Civil Code Section 2338, an employer or other covered entity shall be liable for the discriminatory actions of its supervisors, managers or agents committed within the scope of their employment or relationship with the covered entity or, as defined in Section 7287.6(b), for the discriminatory actions of its employees where it is demonstrated that, as a result of any such discriminatory action, the applicant or employee has suffered a loss of or has been denied an employment benefit.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, 1421.1, Labor Code. (Sections 12920, 12921, 12940, 12941, 12942, 12961, Government Code.)

### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7286.7. Affirmative Defenses to Employment Discrimination.

If employment discrimination is established, this employment discrimination is nonetheless lawful where a proper, relevant affirmative defense is proved and less discriminatory alternatives are not shown to be available. Except where otherwise specifically noted, one or more of the following affirmative defenses may be appropriate in a given situation to justify the employment practice in question. The following defenses are generally referred to in the text of these regulations as "Permissible Defenses:"

- (a) Bona Fide Occupational Qualification (BFOQ). Where an employer or other covered entity has a practice which on its face excludes an entire group of individuals on a basis enumerated in the Act (e.g., all women or all individuals with lower back defects), the employer or other covered entity must prove that the practice is justified because all or substantially all of the excluded individuals are unable to safely and efficiently perform the job in question and because the essence of the business operation would otherwise be undermined.
- (b) Business Necessity. Where an employer or other covered entity has a facially neutral practice which has an adverse impact (i.e., is discriminatory in effect), the employer or other covered entity must prove that there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business and that the challenged practice effectively fulfills the business purpose it is supposed to serve. The practice may still be impermissible where it is shown that there exists an alternative practice which would accomplish the business purpose equally well with a lesser discriminatory impact.
- (c) Job-Relatedness. See Section 7287.4(e) for the defense of job-relatedness which is permissible in employee selection cases.
- (d) Security Regulations. Notwithstanding a showing of discrimination, an employment practice which conforms to applicable security regulations established by the United States or the State of California is lawful
- (e) Non-Discrimination Plans or Affirmative Action Plans. Notwithstanding a showing of discrimination, such an employment practice is lawful which conforms to:
- (1) A bona fide voluntary affirmative action plan as discussed below in section 7286.8;
- (2) A non-discrimination plan pursuant to Labor Code Section 1431 (Government Code Section 12990); or
- (3) An order of a state or federal court or administrative agency of proper jurisdiction.
- (f) Otherwise Required by Law. Notwithstanding a showing of discrimination, such an employment practice is lawful where required by state or federal law or where pursuant to an order of a state or federal court of proper jurisdiction.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, 1421.1, 1431, Labor Code. (Sections 12920, 12921, 12940, 12941, 12942, 12961, 12990, Government Code.)

### HISTORY

- Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Editorial correction of Reference cite (Register 95, No. 6).

### § 7286.8. Affirmative Action Programs.

Voluntary action by employers and other covered entities is an effective means for eliminating employment discrimination. The Commission hereby adopts the *Affirmative Action Guidelines* of the federal Equal Employment Opportunity Commission. [(29 CFR Section 1608 (1979).)] NOTE: Authority cited: Section 1418(a), Labor Code; and Section 12935(a), Government Code. Reference: Sections 1411, 1412, 1418, 1420, 1420.1 and 1420.15, Labor Code; and Sections 12920, 12921, 12935, 12940, 12941 and 12942, Government Code.

### § 7286.9. Remedies.

Upon proof of unlawful practices under the Act, the Commission has broad statutory authority to fashion remedies which are consistent with the purposes of the Act, including, but not limited to, those described below

- (a) Retroactive Relief. Where it has been proved that an individual has been unlawfully denied an employment benefit, the most common remedy shall be to "make whole" the individual through relief which may include, but is not limited to, any or all of the following:
- (1) Back Pay. Back pay remedies shall be available to both individual and class complainants.
- (A) Mitigation and Other Defenses. Mitigating circumstances, including interim earnings, may be considered in determining the amount of back pay. However, unemployment compensation or other collateral benefits recompensable to the State shall not normally be utilized in considering mitigation of back pay.
- (B) Fringe Benefits. Where appropriate, fringe benefits shall normally be included in calculations of back pay. Where such benefits are no longer available or appropriate, then equivalent monetary values may be awarded.
- (2) Injunctive and Other Equitable Relief. The Act makes available injunctive relief including, but not limited to, cease and desist orders, hiring, reinstatement or upgrading of employees, or restoration of membership in labor organizations.
- (A) Seniority. Where appropriate, "constructive seniority" or other temporal measures of service may be awarded so as to place the individual adversely affected into the position or status he or she would have enjoyed but for the unlawful practice.
- (B) Goals and Timetables. Where appropriate, relief may include the setting of goals and timetables for correcting past discriminatory actions. Alternative mandatory injunctive remedies may also be ordered where the past practices of an employer or other covered entity would justify more stringent remedies.
- (b) Prospective Relief. In certain circumstances, appropriate relief requires continuing remedies to correct past unlawful practices. Such relief may include, but is not limited to:
- (1) "Rightful Place" and "Front Pay." Where previously closed positions or lines of progression are made available, an employee shall be restored to his or her "rightful place" and shall not be penalized for lacking prior status or position in that line. In such situations, "front pay" may be awarded to offset losses to an employee until such time as the employee takes his or her "rightful place," or until such time as an offer of the appropriate position is made to the employee.
- (2) "Red Circling." Where an employee transfers to a previously closed line of progression which starts at a lower rate of compensation, the employee shall not be penalized and may be awarded the higher rate of compensation until such time as the rates of compensation are equal. NOTE: Authority cited: Section 1418(a), Labor Code; and Section 12935(a), Government Code. Reference: Sections 1411, 1412 and 1426, Labor Code; and Sections 12920, 12921 and 12970, Government Code.

### HISTORY

- 1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- Repealer of subsection (c) filed 5–16–85; effective thirtieth day thereafter (Register 85, No. 20).

### § 7287.0. Recordkeeping.

Employers and other covered entities are required to maintain certain relevant records of personnel actions. Each employer or other covered entity subject to this section shall retain at all times at each reporting unit, or at company or divisional headquarters, a copy of the most recent CEIR or appropriate substitute and applicant identification records for each such unit and shall make them available upon request to any officer, agent, or employee of the Commission or Department.

(a) California Employer Information Report. All employers regularly employing one hundred or more employees, apprenticeship programs with five or more apprentices and at least one sponsoring employer with 25 or more employees and at least one sponsoring union which operates

a hiring hall or has 25 or more members, and labor organizations with 100 or more members shall prepare an annual personnel report called the "California Employer Information Report" (CEIR) in conformity with guidelines on reporting issued by the Department.

- (1) Substituting Federal Reports. An employer or other covered entity may utilize an appropriate federal report in lieu of the CEIR. Appropriate federal reports include the Equal Employment Opportunity Commission's EEO-1, EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 reports and appropriate reports filed with the Office of Federal Contract Compliance Programs.
- (2) Sample Forms and Guidelines. Appropriate copies of sample forms and applicable guidelines shall be available to any employer or other covered entity from the Sacramento administrative office of the Department of Fair Employment and Housing.
- (3) Special Reporting. If an employer or other covered entity is engaged in activities for which the standard reporting criteria are not appropriate, special reporting procedures may be required. In such case, the employer or other covered entity should so advise the Department and submit a specific proposal for an alternative reporting system prior to the date on which the report should be prepared. If it is claimed that the preparation of the report would create undue hardship, an employer may apply to the Department for an exemption from the requirements of this section.
- (4) Remedy for Failure to Prepare or Make Reports Available. Upon application by the FEHC or DFEH for judicial relief, any employer failing or refusing to prepare or to make available reports as required under this section may be compelled to do so by a Superior Court of California.
- (5) Penalties for False Statements. The willful making of false statements on a CEIR or other required record is a violation of California Labor Code Section 1430.3 (Government Code Section 12976), and is punishable by fine or imprisonment as set forth therein.
- (b) Applicant Identification Records. Unless otherwise prohibited by law and for recordkeeping purposes only, every employer or other covered entity shall maintain data regarding the race, sex, and national origin of each applicant and for the job for which he or she applied. If such data is to be provided on an identification form, this form shall be separate or detachable from the application form itself. Employment decisions shall not be based on whether an applicant has provided this information, nor shall the applicant identification information be used for discriminatory purposes, except pursuant to a bona fide affirmative action or non–discrimination plan.
- (1) For recordkeeping purposes only, "applicant" means any individual who files a formal application or, where an employer or other covered entity does not provide application forms, any individual who otherwise indicates to the employer or other covered entity a specific desire to be considered for employment. An individual who simply appears to make an informal inquiry or who files an unsolicited resume upon which no employment action is taken is not an applicant.
- (2) An employer or other covered entity shall either retain the original documents used to identify applicants, or keep statistical summaries of the collected information.
- (3) Applicant records shall be preserved for the time period set forth in Section 7286.9(c) (1) and (2).
- (c) Preservation of Records. Any personnel or other employment records made or kept by any employer or other covered entity dealing with any employment practice and affecting any employment benefit of any applicant or employee (including all applications, personnel, membership or employment referral records or files) shall be preserved by the employer or other covered entity for a period of two years from the date of the making of the record or the date of the personnel action involved, whichever occurs later. However, the State Personnel Board shall maintain such records and files for a period of one year.
- (1) California Employment Information Report. Every employer subject to subsection (a) above shall preserve for a period of two years from

- the date of preparation of the CEIR such records as were necessary for completion of the CEIR.
- (2) Applicant Identification Records. Every employer subject to subsection (b) above shall preserve applicant identification information for a period of two years from the date it was received.
- (3) Separate Records on Sex. Race, and National Origin. Records as to the sex, race, or national origin of any individual accepted for employment shall be kept separately from the employee's main personnel file or other records available to those responsible for personnel decisions. For example, such records could be kept as part of an automatic data processing system in the payroll department.
- (4) After Filing of Complaint. Upon notice of or knowledge that a complaint has been filed against it under the Act, any respondent, including the State Personnel Board, shall maintain and preserve any and all relevant records and files until such complaint is fully and finally disposed of and all appeals from related proceedings have concluded.
- (A) For purposes of this subsection, "related proceedings" shall include any action brought in Superior Court pursuant to Section 1422.2 of the Labor Code (Section 12965 of the Government Code).
- (B) The term "records and files relevant to the complaint" shall include, but is not limited to, personnel or employment records relating to the complaining party and to all other employees holding similar positions to that held or sought by the complainant at the facility or other relevant subdivision where the discriminatory practice allegedly occurred. The term also includes applications, forms or test papers completed by the complainant and by all other candidates for the same position at that facility or other relevant subdivision where the employment practice occurred. All relevant records made or kept pursuant to subsections (a) and (b) above shall also be preserved.
- (C) The term "fully and finally disposed of and all appeals from related proceedings have concluded" refers to the expiration of the statutory period within which a complainant or respondent may bring an action in Superior Court, or an agreement has been reached by the parties whereby no further judicial review is available to any of the parties, or a final order has been entered by the Commission or a body of judicial review for which the time for filing a notice of appeal has expired.
- (d) Posting of Act. Every employer or other covered entity shall post in a conspicuous place or places on its premises a notice to be prepared and distributed by the Department which sets forth excerpts of the Act and such relevant information which the Department deems necessary to explain the Act. Such employers employing significant numbers, no less than 10% of their work force, of non-English-speaking persons (e.g., Chinese or Spanish speaking) at any facility or establishment must also post in the appropriate foreign language at each such facility or establishment. Such notices may be obtained from the Department.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1420, 1420.4, Labor Code. (Sections 12940, 12946, Government Code.)

### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

# Subchapter 2. Particular Employment Practices

### § 7287.1. Statement of Purpose.

Certain employment practices have the effect, either directly or indirectly, of discriminating against individuals on a basis enumerated in the Act. Such practices are discussed in this subchapter and the provisions are applicable to all discriminatory actions as more specifically discussed in the following subchapters.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, Labor Code. (Sections 12920, 12921, 12940, 12941, 12942, Government Code.)

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7287.2. Definitions.

- (a) "Recruitment." The practice of any employer or other covered entity that has the purpose or effect of informing any individual about an employment opportunity, or assisting an individual to apply for employment, an activity leading to employment, membership in a labor organization, acceptance in an apprenticeship training program, or referral by an employment agency.
- (b) "Date of Determination to Hire." The time at which an employer or other covered entity has made an offer of employment to the individual.
- (c) "Pre-employment Inquiry." Any oral or written request made by an employer or other covered entity for information concerning the qualifications of an applicant for employment or for entry into an activity leading to employment.
- (d) "Application." Except for recordkeeping purposes, any writing or other device used by an employer or other covered entity to make a preemployment inquiry or submitted to an employer or other covered entity for the purpose of seeking consideration for employment.
- (e) "Placement." Any status, category, rank, level, location, department, division, program, duty or group of duties, or any other similar classification or position for which an employee can be selected or to which an employee can be assigned by any employment practice. Employment practices that can determine placement in this way include, but are not limited to: hirring, discharge, promotion, transfer, callback, or other change of classification or position; inclusion in membership in any group or organization; any referral assignment to any place, unit, division, status or type of work.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, Labor Code. (Sections 12920, 12921, 12940, 12942, Government Code.)

### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing Certificate of Compliance included (Register 80, No. 25).

### § 7287.3. Pre-Employment Practices.

- (a) Recruitment.
- (1) Duty Not to Discriminate. Any employer or other covered entity engaged in recruitment activity shall recruit in a non-discriminatory manner. However, nothing in these regulations shall preclude affirmative efforts to utilize recruitment practices to attract minorities, individuals of one sex or the other, individuals with disabilities, individuals over 40 years of age, and any other individual covered by the Act.
- (2) Prohibited Recruitment Practices. An employer or other covered entity shall not, unless pursuant to a permissible defense, engage in any recruitment activity which:
- (A) Restricts, excludes, or classifies individuals on a basis enumerated in the Act:
- (B) Expresses a preference for individuals on a basis enumerated in the
- (C) Communicates or uses advertising methods to communicate the availability of employment benefits in a manner intended to discriminate on a basis enumerated in the Act.
  - (b) Pre-Employment Inquiries.
- (1) Limited Permissible Inquiries. An employer or other covered entity may make any pre-employment inquiries which do not discriminate on a basis enumerated in the Act. Inquiries which directly or indirectly identify an individual on a basis enumerated in the Act are unlawful unless pursuant to a permissible defense. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101–336) (42 U.S.C.A. §12101 et seq.) and the regulations adopted pursuant thereto, nothing in Government Code section 12940, subdivision (d), or in this subdivision, shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical histo-

- ry of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.
- (2) Applicant Flow and Other Statistical Recordkeeping. Notwith-standing any prohibition in these regulations on pre-employment inquiries, it is not unlawful for an employer or other covered entity to collect applicant-flow and other recordkeeping data for statistical purposes as provided in Section 7287.0(b) of these regulations or in other provisions of state and federal law.
  - (c) Applications.
- (1) Application Forms. When employers or other covered entities provide, accept, and consider application forms in the normal course of business, in so doing they shall not discriminate on a basis enumerated in the Act
- (2) Photographs. Photographs shall not be required as part of an application unless pursuant to a permissible defense.
- (3) Separation or Coding. Application forms shall not be separated or coded or otherwise treated so as to identify individuals on a basis enumerated in the Act unless pursuant to a permissible defense or for record-keeping or statistical purposes.
- (d) Interviews. Personal interviews shall be free of discrimination. Notwithstanding any internal safeguards taken to secure a discrimination–free atmosphere in interviews, the entire interview process is subject to review for adverse impact on individuals on a basis enumerated in the Act.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12940, 12941 and 12942, Government Code.

### HISTORY

- 1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- Change without regulatory effect amending subsections (a)(1), (b)(1) and NOTE filed 7-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).
- 3. Editorial correction of subsection (a)(1) (Register 95, No. 38).

### § 7287.4. Employee Selection.

- (a) Selection and Testing. Any policy or practice of an employer or other covered entity which has an adverse impact on employment opportunities of individuals on a basis enumerated in the Act is unlawful unless the policy or practice is job—related, as defined in Section 7287.4(e). The Commission herein adopts the *Uniform Guidelines on Employee Selection Procedures* promulgated by various federal agencies, including the EEOC and Department of Labor. [29 CFR 1607 (1978)].
- (b) Placement. Placements that are less desirable in terms of location, hours or other working conditions are unlawful where such assignments segregate, or otherwise discriminate against individuals on a basis enumerated in the Act, unless otherwise pursuant to a permissible defense to employment discrimination. An assignment labeled or otherwise deemed to be "protective" of a category of persons on a basis enumerated in the Act is unlawful unless pursuant to a permissible defense. (See also Section 7291.2(d)(2) regarding permissible transfers on account of pregnancy by employees not covered under Title VII of the federal Civil Rights Act of 1964.)
- (c) Promotion and Transfer. An employer or other covered entity shall not restrict information on promotion and transfer opportunities to certain employees or classes of employees when the restriction has the effect of discriminating on a basis enumerated in the Act.
- (1) Requests for Transfer or Promotion. An employer or other covered entity who considers bids or other requests for promotion or transfer shall do so in a manner that does not discriminate against individuals on a basis enumerated in the Act, unless pursuant to a permissible defense.
- (2) Training. Where training which may make an employee eligible for promotion and/or transfer is made available, it shall be made available in a manner which does not discriminate against individuals on a basis enumerated in the Act.
- (3) No-Transfer Policies. Where an employment practice has operated in the past to segregate employees on a basis enumerated in the Act,

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a no-transfer policy or other practice that has the effect of maintaining a continued segregated pattern is unlawful.

- (d) Specific Practices.
- (1) Criminal Records. Except as otherwise provided by law (e.g., 12 U.S.C. 1829; Labor Code Section 432.7), it is unlawful for an employer or other covered entity to inquire or seek information regarding any applicant concerning:
  - (A) Any arrest or detention which did not result in conviction;
- (B) Any conviction for which the record has been judicially ordered sealed, expunged, or statutorily eradicated (e.g., juvenile offense records sealed pursuant to Welfare and Institutions Code Section 389 and Penal Code Sections 851.7 or 1203.45); any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed pursuant to Penal Code Section 1203.4; or
- (C) Any arrest for which a pretrial diversion program has been successfully completed pursuant to Penal Code Sections 1000.5 and 1001.5.
- (2) Height Standards. Height standards which discriminate on a basis enumerated in the Act shall not be used by an employer or other covered entity to deny an individual an employment benefit unless pursuant to a permissible defense.
- (3) Weight Standards. Weight standards which discriminate on a basis enumerated in the Act shall not be used by an employer or other covered entity to deny an individual an employment benefit unless pursuant to a permissible defense.
- (e) Permissible Selection Devices. A testing device or other means of selection which is facially neutral, but which has an adverse impact (as described in the Uniform Guidelines on Employee Selection Procedures (29 CFR 1607 (1978)) upon persons on a basis enumerated in the Act, is permissible only upon a showing that the selection practice is sufficiently related to an essential function of the job in question to warrant its use. (See Section 7287.4(a).)

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12940 and 12941, Government Code.

### HISTORY

- Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Editorial correction of subsection (e) filed 4–23–82; designated effective 6–1–82 (Register 82. No. 17).

### § 7287.5. Compensation. (Reserved.)

### § 7287.6. Terms, Conditions and Privileges of Employment.

- (a) Fringe Benefits. (Reserved.)
- (b) Harassment.
- (1) Harassment includes but is not limited to:
- (A) Verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act;
- (B) Physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual on a basis enumerated in the Act;
- (C) Visual forms of harassment, e.g., derogatory posters, cartoons, or drawings on a basis enumerated in the Act; or
- (D) Sexual favors, e.g., unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors. [See also Section 7291.1 (f) (l).]
- (E) In applying this subsection, the rights of free speech and association shall be accommodated consistently with the intent of this subsection.
- (2) Harassment of an applicant or employee by an employer or other covered entity, its agents or supervisors is unlawful.
- (3) Harassment of an applicant or employee by an employee other than those listed in subsection (b)(2) above is unlawful if the employer or other covered entity, its agents or supervisors knows of such conduct and fails to take immediate and appropriate corrective action. Proof of such knowledge may be direct or circumstantial. If the employer or other covered entity, its agents or supervisors did not know but should have known

- of the harassment, knowledge shall be imputed unless the employer or other covered entity can establish that it took reasonable steps to prevent harassment from occurring. Such steps may include affirmatively raising the subject of harassment, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under California law, and developing methods to sensitize all concerned.
- (4) An employee who has been harassed on the job by a co–employee should inform the employer or other covered entity of the aggrievement; however, an employee's failure to give such notice is not an affirmative defense
- (c) Physical Appearance, Grooming, and Dress Standards. It is lawful for an employer or other covered entity to impose upon an employee physical appearance, grooming, or dress standards. However, if such a standard discriminates on a basis enumerated in the Act and if it also significantly burdens the individual in his or her employment, it is unlawful.
- (d) Reasonable Discipline. Nothing in these regulations may be construed as limiting an employer's or other covered entity's right to take reasonable disciplinary measures which do not discriminate on a basis enumerated in the Act.
  - (e) Seniority. (Reserved.)

NOTE: Authority: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, Labor Code. (Sections 12920, 12921, 12940, 12941, 12942, Government Code.)

### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7287.7. Aiding and Abetting.

- (a) Prohibited Practices.
- (1) It is unlawful to assist any person or individual in doing any act known to constitute unlawful employment discrimination.
- (2) It is unlawful to solicit or encourage any person or individual to violate the Act, whether or not the Act is in fact violated.
- (3) It is unlawful to coerce any person or individual to commit unlawful employment discrimination with offers of cash, other consideration, or an employment benefit, or to impose or threaten to impose any penalty, including denial of an employment benefit.
- (4) It is unlawful to conceal or destroy evidence relevant to investigations initiated by the Commission or the Department or their staffs.
- (5) It is unlawful to advertise for employment on a basis prohibited in the Act.
  - (b) Permissible Practices.
- (1) It shall not be unlawful, without more, to have been present during the commission of acts amounting to unlawful discrimination or to fail to prevent or report such acts unless it is the normal business duty of the person or individual to prevent or report such acts.
- (2) It shall not be unlawful to maintain good faith lawful defenses or privileges to charges of discrimination.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, Labor Code. (Sections 12920, 12921, 12940, 12941, 12942, Government Code.)

### § 7287.8. Retaliation.

- (a) Retaliation Generally. It is unlawful for an employer or other covered entity to demote, suspend, reduce, fail to hire or consider for hire, fail to give equal consideration in making employment decisions, fail to treat impartially in the context of any recommendations for subsequent employment which the employer or other covered entity may make, adversely affect working conditions or otherwise deny any employment benefit to an individual because that individual has opposed practices prohibited by the Act or has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted by the Commission or Department or their staffs.
- (1) Opposition to practices prohibited by the Act includes, but is not limited to:
- (A) Seeking the advice of the Department or Commission, whether or not a complaint is filed, and if a complaint is filed, whether or not the complaint is ultimately sustained;

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- (B) Assisting or advising any person in seeking the advice of the Department or Commission, whether or not a complaint is filed, and if a complaint is filed, whether or not the complaint is ultimately sustained;
- (C) Opposing employment practices which an individual reasonably believes to exist and believes to be a violation of the Act;
- (D) Participating in an activity which is perceived by the employer or other covered entity as opposition to discrimination, whether or not so intended by the individual expressing the opposition; or
- (E) Contacting, communicating with or participating in the proceeding of a local human rights or civil rights agency regarding employment discrimination on a basis enumerated in the Act.
- (2) Assistance with or participation in the proceedings of the Commission or Department includes, but is not limited to:
- (A) Contacting, communicating with or participating in the proceedings of the Department or Commission due to a good faith belief that the Act has been violated; or
- (B) Involvement as a potential witness which an employer or other covered entity perceives as participation in an activity of the Department or the Commission.
- (b) Exception for Reasonable Discipline. Nothing in these regulations shall be construed to prevent an employer or other covered entity from enforcing reasonable disciplinary policies and practices, nor from demonstrating that the actions of an applicant or employee were either disruptive or otherwise detrimental to legitimate business interests so as to justify the denial of an employment benefit.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, Labor Code. (Sections 12920, 12921, 12940, 12941, 12942, Government Code.)

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7287.9. Association.

- (a) It is unlawful for an employer or other covered entity to deny employment benefits to, harass, or intimidate any applicant or employee because the employer or other covered entity disapproves generally of the applicant's or employee's association with individuals because they are in a category enumerated in the Act.
- (b) It shall be unlawful for an employer or other covered entity to deny equal consideration to any applicant or employee on the basis that he or she sympathizes with, encourages or participates in groups organized for the protection or assertion of rights protected under the Act.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.1, 1420.15, Labor Code. (Sections 12920, 12921, 12940, 12941, 12942, Government Code.)

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7288.0. Sexual Harassment Training and Education.

- (a) Definitions. For purposes of this section:
- (1) "Contractor" is a person performing services pursuant to a contract to an employer, meeting the criteria specified by Government Code section 12940, subdivision (j)(5), for each working day in 20 consecutive weeks in the current calendar year or preceding calendar year.
  - (2) "Effective interactive training" includes any of the following:
- (A) "Classroom" training is in-person, trainer-instruction, whose content is created by a trainer and provided to a supervisor by a trainer, in a setting removed from the supervisor's daily duties.
- (B) "E-learning" training is individualized, interactive, computer-based training created by a trainer and an instructional designer. An e-learning training shall provide a link or directions on how to contact a trainer who shall be available to answer questions and to provide guidance and assistance about the training within a reasonable period of time after the supervisor asks the question, but no more than two business days after the question is asked.
- (C) "Webinar" training is an internet-based seminar whose content is created and taught by a trainer and transmitted over the internet or intranet in real time. An employer utilizing a webinar for its supervisors must

document and demonstrate that each supervisor who was not physically present in the same room as the trainer nonetheless attended the entire training and actively participated with the training's interactive content, discussion questions, hypothetical scenarios, quizzes or tests, and activities. The webinar must provide the supervisors an opportunity to ask questions, to have them answered and otherwise to seek guidance and assistance.

- (D) Other "effective interactive training" and education includes the use of audio, video or computer technology in conjunction with classroom, webinar and/or e-learning training.
- (E) For any of the above training methods, the instruction shall include questions that assess learning, skill—building activities that assess the supervisor's application and understanding of content learned, and numerous hypothetical scenarios about harassment, each with one or more discussion questions so that supervisors remain engaged in the training.
  - (3) "Employee" includes full time, part time, and temporary workers.
  - (4) "Employer" means any of the following:
- (A) any person engaged in any business or enterprise in California, who employs 50 or more employees to perform services for a wage or salary or contractors or any person acting as an agent of an employer, directly or indirectly.
- (B) the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. For the purposes of this section, governmental and quasi-governmental entities such as boards, commissions, local agencies and special districts are considered "political subdivisions of the state."
- (5) "Having 50 or more employees" means employing or engaging fifty or more employees or contractors for each working day in any twenty consecutive weeks in the current calendar year or preceding calendar year. There is no requirement that the 50 employees or contractors work at the same location or all work or reside in California.
- (6) "Instructional Designer" under this section is an individual with expertise in current instructional best practices, and who develops the training content based upon material provided by a trainer.
- (7) "New" supervisory employees are employees promoted or hired to a supervisory position after July 1, 2005.
- (8) "Supervisory employees" or "supervisors" under this section are supervisors located in California, defined under Government Code section 12926, subdivision (r). Attending training does not create an inference that an employee is a supervisor or that a contractor is an employee or a supervisor.
- (9) "Trainers" or "Trainers or educators" qualified to provide training under this section are individuals who, through a combination of training and experience have the ability to train supervisors about the following:

  1) what are unlawful harassment, discrimination and retaliation under both California and federal law; 2) what steps to take when harassing behavior occurs in the workplace; 3) how to report harassment complaints;
  4) how to respond to a harassment complaint; 5) the employer's obligation to conduct a workplace investigation of a harassment complaint; 6) what constitutes retaliation and how to prevent it; 7) essential components of an anti-harassment policy; and 8) the effect of harassment on harassed employees, co-workers, harassers and employers.
  - (A) A trainer shall be one or more of the following:
- 1. "Attorneys" admitted for two or more years to the bar of any state in the United States and whose practice includes employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964, or
- 2. "Human resource professionals" or "harassment prevention consultants" working as employees or independent contractors with a minimum of two or more years of practical experience in one or more of the following: a. designing or conducting discrimination, retaliation and sexual harassment prevention training; b. responding to sexual harassment complaints or other discrimination complaints; c. conducting investigations of sexual harassment complaints; or d. advising employers or employees regarding discrimination, retaliation and sexual harassment prevention, or

- 3. "Professors or instructors" in law schools, colleges or universities who have a post–graduate degree or California teaching credential and either 20 instruction hours or two or more years of experience in a law school, college or university teaching about employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964.
- (B) Individuals who do not meet the qualifications of a trainer as an attorney, human resource professional, harassment prevention consultant, professor or instructor because they lack the requisite years of experience may team teach with a trainer in classroom or webinar trainings provided that the trainer supervises these individuals and the trainer is available throughout the training to answer questions from training attendees.
- (10) "Training," as used in this section, is effective interactive training as defined at section 7288.0, subdivision (a)(2).
- (11) "Two hours" of training is two hours of classroom training or two hours of webinar training or, in the case of an e-learning training, a program that takes the supervisor no less than two hours to complete.
  - (b) Training.
- (1) Frequency of Training. An employer shall provide two hours of training, in the content specified in section 7288.0, subdivision (c), once every two years, and may use either of the following methods or a combination of the two methods to track compliance.
- (A) "Individual" Tracking. An employer may track its training requirement for each supervisory employee, measured two years from the date of completion of the last training of the individual supervisor.
- (B) "Training year" tracking. An employer may designate a "training year" in which it trains some or all of its supervisory employees and thereafter must again retrain these supervisors by the end of the next "training year," two years later. Thus, supervisors trained in training year 2005 shall be retrained in 2007. For newly hired or promoted supervisors who receive training within six months of assuming their supervisory positions and that training falls in a different training year, the employer may include them in the next group training year, even if that occurs sooner than two years. An employer shall not extend the training year for the new supervisors beyond the initial two year training year. Thus, with this method, assume that an employer trained all of its supervisors in 2005 and sets 2007 as the next training year. If a new supervisor is trained in 2006 and the employer wants to include the new supervisor in its training year, the new supervisor would need to be trained in 2007 with the employer's other supervisors.
- (2) Documentation of Training. An employer shall keep documentation of the training it has provided its employees under this section to track compliance, including the name of the supervisory employee trained, the date of training, the type of training, and the name of the training provider and shall retain the records for a minimum of two years.
- (3) Training at New Businesses. Businesses created after January 1, 2006, must provide training to supervisors within six months of their establishment and thereafter biennially. Businesses that expand to 50 employees and/or contractors and thus become eligible under these regulations, must provide training to supervisors within six months of their eligibility and thereafter biennially.
- (4) Training for New Supervisors. New supervisors shall be trained within six months of assuming their supervisory position and thereafter shall be trained once every two years, measured either from the individual or training year tracking method.
- (5) Duplicate Training. A supervisor who has received training in compliance with this section within the prior two years either from a current, a prior, an alternate or a joint employer need only be given, be required to read and to acknowledge receipt of, the employer's anti-harassment policy within six months of assuming the supervisor's new supervisory position or within six months of the employer's eligibility. That supervisor shall otherwise be put on a two year tracking schedule based on the supervisor's last training. The burden of establishing that the

prior training was legally compliant with this section shall be on the current employer.

(6) Duration of Training. The training required by this section does not need to be completed in two consecutive hours. For classroom training or webinars, the minimum duration of a training segment shall be no less than half an hour. E-learning courses may include bookmarking features which allow a supervisor to pause their individual training so long as the actual e-learning program is two hours.

#### (c) Content.

The learning objectives of the training mandated by California Government Code section 12950.1 shall be: 1) to assist California employers in changing or modifying workplace behaviors that create or contribute to "sexual harassment" as that term is defined in California and federal law; and 2) to develop, foster and encourage a set of values in supervisory employees who complete mandated training that will assist them in preventing and effectively responding to incidents of sexual harassment.

Towards that end, the training mandated by California Government Code section 12950.1, shall include but is not limited to:

- (1) A definition of unlawful sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964. In addition to a definition of sexual harassment, an employer may provide a definition of and train about other forms of harassment covered by the FEHA, as specified at Government Code section 12940, subdivision (j), and discuss how harassment of an employee can cover more than one basis.
- (2) FEHA and Title VII statutory provisions and case law principles concerning the prohibition against and the prevention of unlawful sexual harassment, discrimination and retaliation in employment.
  - (3) The types of conduct that constitutes sexual harassment.
  - (4) Remedies available for sexual harassment.
  - (5) Strategies to prevent sexual harassment in the workplace.
- (6) "Practical examples," such as factual scenarios taken from case law, news and media accounts, hypotheticals based on workplace situations and other sources which illustrate sexual harassment, discrimination and retaliation using training modalities such as role plays, case studies and group discussions.
  - (7) The limited confidentiality of the complaint process.
- (8) Resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.
- (9) The employer's obligation to conduct an effective workplace investigation of a harassment complaint.
- (10) Training on what to do if the supervisor is personally accused of harassment.
- (11) The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed. Either the employer's policy or a sample policy shall be provided to the supervisors. Regardless of whether the employer's policy is used as part of the training, the employer shall give each supervisor a copy of its anti-harassment policy and require each supervisor to read and to acknowledge receipt of that policy.
  - (d) Remedies.

As part of an order in an adjudicatory proceeding pursuant to California Code of Regulations, Title 2, section 7429, the Commission may issue an order finding an employer failed to comply with Government Code section 12950.1 and order such compliance within 60 days of the effective date of the Commission's order.

(e) Compliance with section 12950.1 prior to effective date of Commission regulations.

An employer who has made a substantial, good faith effort to comply with section 12950.1 by completing training of its supervisors prior to the effective date of these regulations shall be deemed to be in compliance with section 12950.1 regarding training as though it had been done under these regulations.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926(r), 12940(j)(5), 12950 and 12950.1, Government Code.

### HISTORY

1. Renumbering of reserved section 7288.0 to reserved section 7288.1 and new section 7288.0 filed 7–18–2007; operative 8–17–2007 (Register 2007, No. 29).

### § 7288.1. Labor Organizations. (Reserved.)

### HISTORY

1. Renumbering of reserved section 7288.1 to reserved section 7288.2 and renumbering of reserved section 7288.0 to reserved section 7288.1 filed 7–18–2007; operative 8–17–2007 (Register 2007, No. 29).

### § 7288.2. Apprenticeship Programs. (Reserved.)

### HISTORY

1. Renumbering of reserved section 7288.2 to reserved section 7288.3 and renumbering of reserved section 7288.1 to reserved section 7288.2 filed 7–18–2007; operative 8–17–2007 (Register 2007, No. 29).

### § 7288.3. Employment Agencies. (Reserved.)

### HISTORY

1. Renumbering of reserved section 7288.2 to reserved section 7288.3 filed 7–18–2007; operative 8–17–2007 (Register 2007, No. 29).

# Subchapter 3. Race and Color Discrimination

(Reserved)

# Subchapter 4. National Origin and Ancestry Discrimination

### § 7289.4. Defenses.

These regulations incorporate the defenses set forth in Section 7286.7. NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12940, Government Code.

### HISTORY

1. New Subchapter 4 (Sections 7289.4 and 7289.5) filed 12–17–82; effective thirtieth day thereafter (Register 82, No. 52).

### § 7289.5. Specific Employment Practices.

(a)-(c) (Reserved)

(d) An employer may have a rule requiring that employees speak only in English at certain times if the employer can show that the rule is justified by business necessity (See Section 7286.7(b)), and if the employer has effectively notified its employees of the circumstances and time when speaking only in English is required and of the consequences of violating the rule.

(e) (Reserved)

(f) Citizenship requirements. Citizenship requirements which have the purpose or effect of discriminating against applicants or employees on the basis of national origin or ancestry are unlawful unless pursuant to a permissible defense.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12940, Government Code.

# Subchapter 5. Ancestry Discrimination (Reserved)

### Subchapter 6. Sex Discrimination

### § 7290.6. General Prohibition Against Discrimination on the Basis of Sex.

- (a) Statutory Source. These regulations are adopted by the Fair Employment and Housing Commission pursuant to Sections 1420, 1420.2 and 1420.35 of the Labor Code. (Sections 12940, 12943, and 12945 of the Government Code.)
- (b) Statement of Purpose. The purpose of the law against discrimination in employment because of sex is to eliminate the means by which individuals of the female sex have historically been relegated to inferior

jobs and to guarantee that in the future both sexes will enjoy equal employment benefits.

(c) Incorporation of General Regulations. These regulations pertaining to discrimination on the basis of sex incorporate each of the provisions of Subchapters 1 and 2 of Chapter 2, unless a provision is specifically excluded or modified.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.2, 1420.35, Labor Code. (Sections 12920, 12921, 12940, 12945, Government Code.)

#### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7290.7. Definitions.

- (a) "Sex." An applicant's or employee's gender; however, nothing herein shall limit protections due an individual on account of pregnancy, childbirth, or related medical conditions.
- (b) "Sex Stereotype." An assumption about an individual's ability or inability to perform certain kinds of work based on a myth or generalization about the individual's gender.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.2, 1420.35, Labor Code. (Sections 12920, 12921, 12940, 12943, 12945, Government Code.)

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

#### § 7290.8. Defenses.

Once employment discrimination on the basis of sex has been established, an employer or other covered entity may prove one or more appropriate affirmative defenses as generally set forth in Section 7286.7, including, but not limited to, the defense of Bona Fide Occupational Qualification (BFOQ).

- (a) Among situations which will not justify the application of the BFOQ defense are the following:
- (1) A correlation between individuals of one sex and physical agility or strength;
  - (2) A correlation between individuals of one sex and height;
  - (3) Customer preference for employees of one sex;
  - (4) The necessity for providing separate facilities for one sex or
- (5) The fact that members of one sex have traditionally been hired to perform the particular type of job.
  - (b) Personal privacy considerations may justify a BFOQ only where:
- (1) The job requires an employee to observe other individuals in a state of nudity or to conduct body searches, and
- (2) It would be offensive to prevailing social standards to have an individual of the opposite sex present, and
- (3) It is detrimental to the mental or physical welfare of individuals being observed or searched to have an individual of the opposite sex present.
- (c) Employers or other covered entities shall assign job duties and make other reasonable accommodation so as to minimize the number of jobs for which sex is a BFOQ.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420.2, 1420.35, Labor Code. (Sections 12920, 12921, 12940, 12943, 12945, Government Code.)

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7290.9. Pre-Employment Practices.

- (a) Recruitment and Advertising.
- (1) Employers or other covered entities engaged in recruiting activity (see Section 7287.2(a)) shall recruit individuals of both sexes for all jobs unless pursuant to a permissible defense.
- (2) It is unlawful for any publication or other media to separate listings of job openings into "male" and "female" classifications.
  - (b) Pre-Employment Inquiries and Applications.
- (1) For all employers or other covered entities who provide, accept and consider applications, it shall be unlawful to refuse to provide, accept and

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consider applications from individuals of one sex unless pursuant to a permissible defense.

- (2) It is unlawful for an employer or other covered entity to ask the sex of the applicant on an application form or pre-employment questionnaire unless pursuant to a permissible defense or for recordkeeping purposes. After an individual is hired, the employer or other covered entity may record the employee's sex for non-discriminatory personnel purposes.
- (3) It is unlawful for an employer or other covered entity to ask questions regarding childbearing, pregnancy, birth control, or familial responsibilities unless they are related to specific and relevant working conditions of the job in question.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420., 1420.35, Labor Code. (Sections 12920, 12921, 12940, 12943, 12945, Government Code.)

#### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7291.0. Employee Selection.

- (a) Tests of Physical Agility or Strength. Tests of physical agility or strength shall not be used unless the test is administered pursuant to a permissible defense. No applicant or employee shall be refused the opportunity to demonstrate that he or she has the requisite strength or agility to perform the job in question.
  - (b) Height and Weight Standards.
- (1) Use of height or weight standards which discriminate against one sex or the other is unlawful unless pursuant to a permissible defense.
- (2) Use of separate height and/or separate weight standards for males and females is unlawful unless pursuant to a permissible defense.
- (c) Hiring Applicants of Childbearing Age. It is unlawful to refuse to hire a female applicant because she is of childbearing age.
- (d) Prior Work Experience. If an employer or other covered entity considers prior work experience in the selection or assignment of an employee, the employer or other covered entity shall also consider prior unpaid or volunteer work experience.
- (e) Sex Stereotypes. Use of any criterion which is based exclusively or in part on a sex stereotype is unlawful unless pursuant to a permissible defense.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12940, 12943 and 12945, Government Code.

### HISTORY

- Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Amendment filed 3–11–82; effective thirtieth day thereafter (Register 82, No. 11).

### § 7291.1. Terms, Conditions, and Privileges of Employment.

(a) Compensation.

- (1) Except as otherwise required or permitted by regulation, an employer or other covered entity shall not base the amount of compensation paid to an employee, in whole or in part, on the employee's sex.
  - (2) Equal Compensation for Comparable Work. (Reserved.)
  - (b) Fringe Benefits.
- (1) It is unlawful for an employer to condition the availability of fringe benefits upon an employee's sex.
- (2) Insofar as an employment practice discriminates against one sex, an employer or other covered entity shall not condition the availability of fringe benefits upon whether an employee is a "head of household," "principal wage earner," "secondary wage earner," or of other similar status.
- (3) Except where otherwise required by state law, an employer or other covered entity shall not require unequal employee contributions by similarly situated male and female employees to fringe benefit plans, nor shall different amounts of basic benefits be established under fringe benefit plans for similarly situated male and female employees.
- (4) It shall be unlawful for an employer or other covered entity to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on the sex of the employee.
  - (c) Lines of Progression.
- (1) It is unlawful for an employer or other covered entity to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex unless it is justified by a permissible defense. For example, a line of progression or seniority system is unlawful which:
- (A) Prohibits a female from applying for a job labelled "male" or for a job in a "male" line of progression, and vice versa; or
- (B) Prohibits a male scheduled for layoff from displacing a less senior female on a "female" seniority list, and vice versa.
- (2) An employer or other covered entity shall provide equal opportunities to all employees for upward mobility, promotion, and entrance into all jobs for which they are qualified. However, nothing herein shall prevent an employer or other covered entity from implementing mobility programs to accelerate the promotability of underrepresented groups.
  - (d) Dangers to Health, Safety, or Reproductive Functions.
- (1) If working conditions pose a greater danger to the health, safety, or reproductive functions of applicants or employees of one sex than to individuals of the other sex working under the same conditions, the employer or other covered entity shall make reasonable accommodation to:
- (A) Upon the request of an employee of the more endangered sex, transfer the employee to a less hazardous or strenuous position for the duration of the greater danger, unless it can be demonstrated that the transfer would impose an undue hardship on the employer; or
- (B) Alter the working conditions so as to eliminate the greater danger, unless it can be demonstrated that the modification would impose an undue hardship on the employer. Alteration of working conditions includes,

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but is not limited to, acquisition or modification of equipment or devices and extension of training or education.

- (2) An employer or other covered entity may require an applicant or employee to provide a physician's certification that he or she is endangered by the working conditions.
- (3) The existence of a greater risk for employees of one sex than the other shall not justify a BFOQ defense.
- (4) An employer may not discriminate against members of one sex because of the prospective application of this subsection.
- (5) With regard to protections due on account of pregnancy, childbirth, or related medical conditions, see Section 7291.2.
- (6) Nothing in this subsection shall be construed to limit the rights or obligations set forth in Labor Code Section 6300 et seq.
  - (e) Working Conditions.
- (1) Where rest periods are provided, equal rest periods must be provided to employees of both sexes.
- (2) Equal access to comparable and adequate toilet facilities shall be provided to employees of both sexes. This requirement shall not be used to justify any discriminatory employment decision.
- (3) Support services and facilities, such as clerical assistance and office space, shall be provided to employees without regard to the employee's sex.
  - (4) Job duties shall not be assigned according to sex stereotypes.
- (5) It is unlawful for an employer or other covered entity to refuse to hire, employ or promote, or to transfer, discharge, dismiss, reduce, suspend, or demote an individual of one sex and not the other on the grounds that the individual is not sterilized or refuses to undergo sterilization.
- (6) It shall be lawful for an employer or labor organization to provide or make financial provision for childcare services of a custodial nature for its employees or members who are responsible for the care of their minor children.
  - (f) Interpersonal Conduct and Appearance.
- (1) Sexual Harassment. Sexual harassment is unlawful as defined in Section 7287.6(b), and includes verbal, physical, and visual harassment, as well as unwanted sexual advances.
- (2) Physical Appearance, Grooming, and Dress Standards. It is lawful for an employer or other covered entity to impose upon an applicant or employee physical appearance, grooming or dress standards. However, if such a standard discriminates on the basis of sex and if it also significantly burdens the individual in his or her employment, it is unlawful. Note: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

# Subchapter 6A. Sex Discrimination: Pregnancy, Childbirth or Related Medical Conditions

### § 7291.2. Definitions.

The following definitions apply only to this subchapter:

- (a) "Accrued leave," as that term is used in Government Code section 12945, subdivision (b)(1), and section 7291.11, subdivision (a)(1)(A), is any right of an employee, accumulated over the course of his or her employment, to leave work for a period of time with monetary compensation from the employer.
- (b) "Affected by pregnancy," as that term is used in section 7291.6, means that a woman is pregnant or has a related medical condition and that, because of pregnancy, her health care provider has certified that it is medically advisable for her to transfer, in accordance with the provisions of section 7291.2, subdivision (d).
- (c) "Because of pregnancy" includes because of pregnancy, childbirth or a related medical condition or because of an employer's or other cov-

ered entity's perception that a woman is pregnant or has a related medical condition.

- (d) "Certification" means a written communication from the heal;th care provider of the employee that either the employee is disabled due to pregnancy or that it is medically advisable for the employee to be transferred to a less strenuous or hazardous position or to less strenuous or hazardous duties.
- (1) The certification indicating disability necessitating a leave should contain:
  - (A) The date on which the woman became disabled due to pregnancy;
  - (B) The probable duration of the period or periods of disability, and
- (C) An explanatory statement that, due to the disability, the employee is unable to work at all or is unable to perform any one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy, or to other persons.
- (2) The certification indicating the medical advisability of the transfer should contain:
- (A) The date on which the need to transfer became medically advisable:
- (B) The probable duration of the period or periods of the need to transfer; and
- (C) An explanatory statement that, due to the woman's pregnancy, the transfer is medically advisable.
- (e) "CFRA" means the Moore–Brown–Roberti Family Rights Act of 1993. (California Family Rights Act, Gov. Code §§12945.1 and 12945.2.) "CFRA leave" means family care or medical leave taken pursuant to CFRA.
- (f) A "covered entity" is any person (as defined in Government Code section 12925, subdivision (d)), labor organization, apprenticeship training program, training program leading to employment, employment agency, governing board of a school district, licensing board or other entity to which the provisions of Government Code sections 12940, 12943, 12944 or 12945 apply.
- (g) A woman is "disabled by pregnancy" if, in the opinion of her health care provider, she is unable because of pregnancy to work at all or is unable to perform any one or more of the essential functions of her job or to perform these functions without undue risk to herself, the successful completion of her pregnancy, or to other persons. The term "essential functions" is defined in Government Code section 12926, subdivision (f). For purposes of this subdivision, a woman is also considered to be "disabled by pregnancy" if she is suffering from severe "morning sickness" or needs to take time off for prenatal care.
- (h) "Employer," as used in these regulations, except for section 7291.3, is any employer with five or more full or part time employees, who is an employer within the meaning of Government Code section 12926, subdivision (d), and section 7286.5, subdivision (a), of these regulations. "Employer" includes "non-Title VII employers" and "Title VII employers," as those terms are defined below. "Employer" includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. The terms "all employers" and "any employer" refer to employers covered by the FEHA.
- (1) A "non-Title VII employer" is any employer with five to 14 employees who is not subject to any provision of Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. section 2000e, et seq.
- (2) A "Title VII employer" is any employer with 15 or more employees who is also subject to any provision of Title VII of the federal Civil Rights Act of 1964.
- (i) "Employment in the same position" means employment in, or reinstatement to, the original position that an employee held before being transferred and/or taking a disability leave, or both, because of pregnancy.
- (j) "Employment in a comparable position" means employment in a position which is virtually identical to the employee's original position in terms of pay, benefits, and working conditions, including privileges,

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perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must be performed at the same or geographically proximate worksite from where the employee was previously employed. It ordinarily means the same shift or the same or an equivalent work schedule.

- (k) "FMLA" means the federal Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq., and its implementing regulations, 29 CFR Part 825, issued January 6, 1995. "FMLA leave" means family care or medical leave taken pursuant to FMLA.
- (*l*) "Four months," as that term is used in Government Code section 12945, subdivision (b)(2), means the number of days the employee would normally work within four months. (See also section 7291.7, subdivision (a)(1).)
  - (m) "Health Care Provider" means either:
- (1) an individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code or an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the pregnancy, childbirth or related medical condition, or
- (2) any other persons, including nurse practitioners, nurse midwives, or others who meet the definition of "others capable of providing health care services" under FMLA and its implementing regulations.
- (n) A "normal pregnancy, childbirth or related medical condition" is a pregnancy or childbirth that in the opinion of the woman's health care provider involves neither high risk nor complications.
- (o) "Pregnancy disability leave" is any leave, whether paid or unpaid, taken by an employee, for any period(s) up to a total of four months during which she is disabled by pregnancy.
- (p) A "related medical condition" is any medically recognized physical or mental condition that is related to pregnancy or childbirth. This term is not the same as the term "medical condition" defined in Government Code section 12926, subdivision (h), which means any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence
- (q) "Transfer," as that term is used throughout these regulations, refers to the transfer of an employee because of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties.
- NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12926, subd. (d), 12940, 12943, 12944, 12945, Government Code; Family and Medical Leave Act, (FMLA) 29 U.S.C. §2601, et seq. and FMLA regulations, Code of Federal Regulations, tit. 29, part 825, issued January 6, 1995 (hereafter, 29 CFR 825); Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. §2000e; and J.E. Robinson v. Fair Employment & Housing Com. (1992) 2 Cal. 4th 226

### HISTORY

- 1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Repealer and new section filed 3–20–87; effective thirtieth day thereafter (Register 87, No. 12).
- New subchapter 6A, repealer and new section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.3. Prohibition Against Harassment.

It is an unlawful employment practice for any employer with one or more employee or other covered entity to harass, as defined in Government Code section 12940, subdivision (h)(3)(C), an employee or applicant because of pregnancy.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12926, subd. (o), 12940, subds. (h)(1)–(3)(C), and 12945, subd. (d), Government Code.

### **HISTORY**

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.4. Responsibilities of Covered Entities Other than Employers.

Unless a permissible defense applies, discrimination because of pregnancy by any covered entity other than employers constitutes discrimination because of sex under Government Code sections 12926, subdivision (o), 12940, subdivisions (b), (c), (d), (f), (g), (h) and (i), 12943 and 12944. NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12926, subd. (o), 12940, subds. (b), (c), (d), (f), (g), (h) and (i), 12943, 12944, 12945, subd. (d), Government Code; and Stats. 1990, c. 15 (SB 1027), §2. HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.5. Responsibilities of Employers.

Discrimination by employers because of pregnancy constitutes discrimination because of sex under Government Code sections 12926, subdivision (o), and 12940, subdivisions (a), (d), (f), (g), (h), and (i).

(a) Employer Obligations

Except as excused by a permissible defense, it is unlawful for any employer, because of pregnancy of an employee or applicant, to:

- (1) refuse to hire or employ the applicant;
- (2) refuse to select the applicant or employee for a training program leading to employment or promotion, except for non-Title VII employers, as set forth at subdivision (c), below;
  - (3) refuse to promote the employee;
- (4) bar or to discharge the applicant or employee from employment or from a training program leading to employment or promotion;
- (5) refuse to provide health benefits for pregnancy if the employer provides such benefits for other temporary disabilities, except for non-Title VII employers, as set forth at subdivision (d), below;
- (6) discriminate against the applicant or employee in terms, conditions or privileges of employment, except for non-Title VII employers, as set forth at section 7291.11, subdivision (a)(1)(A), below;
- (7) harass the applicant or employee because of pregnancy, as set forth in section 7291.3;
- (8) retaliate, as set forth in section 7291.14, against the employee because of pregnancy or because that employee has exercised her right to take a pregnancy disability leave or transfer; or
- (9) refuse to accommodate the employee who is temporarily disabled by pregnancy to the same extent that other temporarily disabled employees are accommodated under the employer's policy, practice or collective bargaining agreement.
- (10) refuse to transfer the employee affected by pregnancy, as set forth at section 7291.6, below;
- (11) refuse to grant the employee disabled by pregnancy a pregnancy disability leave, as set forth at section 7291.7, below:
- (12) discriminate otherwise against the applicant or employee by any practice that is prohibited by Government Code section 12940, subdivisions (a) and (c) through (l), on the basis of sex.
- (b) Permissible defenses, as defined at section 7286.7, include a bona fide occupational qualification, business necessity or where the practice is otherwise required by law.
- (c) Training Programs Leading to Promotion Exception for non–Title VII Employers

It is lawful for a non-Title VII employer to refuse to select a pregnant employee for a formal training program leading to promotion if the employee is unable to complete the training program at least three months prior to the date, anticipated at the time she applies for the training program, on which she intends to depart on pregnancy disability leave.

(d) Provision of Medical Benefits – Exception for non–Title VII Employers

A non-Title VII employer with five to 14 employees is not required to provide its employees with health insurance coverage for the medical costs of pregnancy, childbirth, or related medical conditions even if the employer provides coverage for other temporary disabilities.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12926, subd. (o), 12940, subds. (a), (c) – (*l*), 12945, subds. (A), (b)(1), (d) and (e); Stats. 1990, c.15 (SB 1027), §2, Government Code; Pregnancy Discrimination Act of 1978 (P.L. 95–555, 42 U.S.C. §2000e, §701(k)), an amend-

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ment to Title VII of the federal Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.); *Cal. Federal Sav. and Loan Ass'n v. Guerra* 479 U.S. 272 [107 S.Ct. 683, 93 L.Ed.2d 613]; and Cal. Code of Regs., tit. 2, §7286.7.

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.6. Transfer.

(a) Transfer - All Employers

It is unlawful for an employer to deny the request of an employee affected by pregnancy to transfer provided that:

- (1) The employee's request is based on the certification of her health care provider that a transfer is medically advisable; and
- (2) Such transfer can be reasonably accommodated by the employer. No employer is required to create additional employment that the employer would not otherwise have created, discharge another employee, violate the terms of a collective bargaining agreement, transfer another employee with more seniority, or promote or transfer any employee who is not qualified to perform the new job. Nothing in these regulations is intended to prevent an employer from accommodating a transfer request by transferring another employee, but there is no obligation to do so.
  - (b) Burden of Proof

The burden shall be on the employer to prove, by a preponderance of the evidence, that such transfer cannot be reasonably accommodated for one or more of the enumerated reasons listed is section 7291.6, subdivision (a)(2).

(c) Transfer to Accommodate Intermittent Leave or a Reduced Work Schedule

If it is medically advisable for an employee to take intermittent leave or leave on a reduced work schedule and it is foreseeable based on planned medical treatment because of pregnancy, the employer may require the employee to transfer temporarily to an available alternative position. This alternative position must have the equivalent rate of pay and benefits, the employee must be qualified for the position, and it must better accommodate recurring periods of leave than the employee's regular job. It does not have to have equivalent duties. Transfer to an alternative position may include altering an existing job to accommodate better the employee's need for intermittent leave or a reduced work schedule.

(d) Right to Reinstatement After Transfer

When the employee's health care provider certifies that there is no further medical advisability for the transfer, intermittent leave, or leave on a reduced work schedule, the employer must reinstate her to her same or comparable position in accordance with the requirements of section 7291.9.

(e) No Eligibility Requirement

There is no length of service requirement before an employee affected by pregnancy is eligible for a transfer.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Section 12945, subds. (c)(1) and (2); Stats. 1992, c. 907 (AB 2865), §1, Government Code; FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825. DFEH v. Save Mart (1992) FEHC Dec. No. 92–01 [1992–93 CEB 1].

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.7. Pregnancy Disability Leave.

The following provisions apply to leave taken for disability because of pregnancy.

(a) Four-Month Leave Requirement for all Employers

All employers must provide a leave of up to four months, as needed, for the period(s) of time a woman is actually disabled by pregnancy even if an employer has a policy or practice which provides less than four months of leave for other similarly situated temporarily disabled employees.

(1) A "four month leave," as that term is defined in section 7291.2, subdivision (*l*), means the number of days the employee would normally work within four months. For a full time employee who works five eighthour days per week, "four months" means 88 working and/or paid eighthour days of leave entitlement, based on an average of 22 working days per month for four months.

- (2) For employees who work more or less than five days a week, or who work on alternative work schedules, the number of working days which constitutes "four months" is calculated on a pro rata or proportional basis
- (A) For example, for an employee who works half time, "four months" may mean 44 eight-hour days or 88 four-hour days, or four months of whatever is the employee's normal half time work schedule. For an employee who normally works six eight-hour days in a week, "four months" means 104 working and/or paid days of leave entitlement.
- (B) If an employee takes leave on an intermittent leave or a reduced work schedule, only the amount of leave actually taken may be counted toward the four months of leave to which the employee is entitled. For example, if an employee misses two hours of work in a morning because of morning sickness, only two hours would be charged against her pregnancy disability leave entitlement.
- (C) If a holiday falls within a week taken as a pregnancy disability leave, the week is nevertheless counted as a week of pregnancy disability leave. If, however, the employer's business activity has temporarily ceased for some reason and employees generally are not expected to report for work for one or more weeks, (e.g., a school closing for two weeks for the Christmas/New Year holiday or summer vacation or an employer closing the plant for retooling), the days the employer's activities have ceased do not count against the employee's pregnancy disability leave entitlement.

### (3) Minimum Duration

Leave may be taken intermittently or on a reduced work schedule when medically advisable, as determined by the health care provider of the employee. An employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave.

(b) Employers With More Generous Leave Policies

If an employer has a more generous leave policy for other temporary disabilities than is required under section 7291.7, subdivision (a), above, the employer must provide such leave to employees temporarily disabled by pregnancy.

(c) No Eligibility Requirement

There is no length of service requirement before an employee disabled by pregnancy is entitled to a pregnancy disability leave.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12940, subd. (a), 12945, subds. (b)(2), (d) and (e), Government Code; Stats. 1990, c. 15 (SB 1027), §2; FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825; Cal. Federal Sav. and Loan Ass'n v. Guerra 479 U.S. 272 [107 S.Ct. 683, 93 L.Ed.2d 613].

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.8. Denial of Leave.

(a) Unlawful Employment Practice

It is an unlawful employment practice for an employer to refuse to grant a pregnancy disability leave to an eligible employee.

(b) Burden of Proof

Denial of a request for pregnancy disability leave is established if the Department or the employee proves, by a preponderance of the evidence, the following elements.

- (1) The employer was an employer under the FEHA with five or more employees.
  - (2) The employee was disabled by pregnancy.
  - (3) The request was reasonable.
  - (4) The employer denied the request for pregnancy disability leave.
  - (c) Reasonable Request

A request to take a pregnancy disability leave is reasonable if it complies with any applicable notice requirements, as specified in section 7291.10, and if it is accompanied, where required, by a certification, as that term is defined in section 7291.2, subdivision (d).

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Section 12945, subd. (b)(2), Government Code; FMLA, 29 U.S.C. §2601, et seq., and FMLA regulations, 29 CFR 825.

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.9. Right to Reinstatement from Pregnancy Disability Leave.

The following rules apply to reinstatement from any leave or transfer taken for disability because of pregnancy.

(a) Guarantee of Reinstatement

Upon granting the pregnancy disability leave or transfer, the employer shall guarantee to reinstate the employee to the same position, or, if excused by section 7291.9, subdivisions (c)(1)(A) or (c)(1)(B), to a comparable position, and shall provide the guarantee in writing upon request of the employee. It is an unlawful employment practice for any employer, after granting a requested pregnancy disability leave or transfer, to refuse to honor its guarantee of reinstatement unless the refusal is justified by the defenses below in subdivision (c)(1) and (c)(2).

- (b) Refusal to Reinstate
- (1) Definite Date of Reinstatement

Where a definite date of reinstatement has been agreed upon at the beginning of the leave or transfer, a refusal to reinstate is established if the Department or employee proves, by a preponderance of the evidence, that the leave or transfer was granted by the employer and that the employer failed to reinstate the employee by the date agreed upon to the same position or, where applicable to a comparable position, as specified below in subdivisions (c)(1) and (c)(2).

(2) Change in Date of Reinstatement

If the reinstatement date differs from the employer's and the employee's original agreement, a refusal to reinstate is established if the Department or employee proves, by a preponderance of the evidence, that the employer failed to reinstate the employee within two business days, where feasible, after the employee notifies the employer of her readiness to return, to the same, or, where applicable, to a comparable position, as specified below in subdivisions (c)(1) and (c)(2).

- (c) Permissible Defenses
- (1) Right to Reinstatement to the Same Position

An employee has no greater right to reinstatement to the same position or to other benefits and conditions of employment than if the employee had been continuously employed in this position during the pregnancy disability leave or transfer period. A refusal to reinstate the employee to her same position or duties is justified if the employer proves, by a preponderance of the evidence, either of the following:

- (A) That the employee would not otherwise have been employed in her same position at the time reinstatement is requested for legitimate business reasons unrelated to the employee taking a pregnancy disability leave or transfer (such as a layoff pursuant to a plant closure).
- (B) That each means of preserving the job or duties for the employee (such as leaving it unfilled or filling it with a temporary employee) would substantially undermine the employer's ability to operate the business safely and efficiently.
  - (2) Right to Reinstatement to a Comparable Position

An employee has no greater right to reinstatement to a comparable position or to other benefits and conditions of employment than an employee who has been continuously employed in another position that is being eliminated. If the employer is excused from reinstating the employee to her same position, or with the same duties, a refusal to reinstate the employee to a comparable position is justified if the employer proves, by a preponderance of the evidence, either of the following:

- (A) That there is no comparable position available. A position is "available" if there is a position open on the employee's scheduled date of reinstatement or within 10 working days thereafter for which the employee is qualified, or to which the employee is entitled by company policy, contract, or collective bargaining agreement.
- (B) For am employer whose employee takes a pregnancy disability leave which does not qualify as a FMLA leave, that a comparable position is available, but filling the available position with the returning employee would substantially undermine the employer's ability to operate the business safely and efficiently.

(d) Right to Reinstatement to Job If Pregnancy Disability Leave Exceeds Four Months

If an employee disabled by pregnancy has taken a pregnancy disability leave for longer than four months, an employer must treat the employee the same regarding reinstatement rights as it treats any other similarly situated employee who has taken a similar length disability leave. For example, if the employer has a policy which allows reinstatement to other temporarily disabled employees who are disabled for six months, the employer must also allow reinstatement to a woman disabled by pregnancy for six months.

(e) Right to Reinstatement to Job If CFRA Leave is Taken Following Pregnancy Disability Leave

At the expiration of a pregnancy disability leave, if an employee takes a CFRA leave for reason of the birth of her child, the employee's right to reinstatement to her job is governed by CFRA and not sections 7291.9, subdivisions (c)(1) and (c)(2), above. Under CFRA, an employer may reinstate an employee either to her same or a comparable job.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12940, subd. (a), 12945, subds. (b)(2) and (d), Government Code; FMLA, 29. U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825; Cal. Federal Sav. and Loan Ass'n v. Guerra 479 U.S. 272 [107 S.Ct. 683, 93 L.Ed.2d 613].

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.10. Requests for Pregnancy Disability Leave or Transfer: Advance Notice; Certification; Employer Response.

The following rules apply to any pregnancy disability leave or transfer.

- (a) Advance Notice
- (1) Verbal Notice

An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs a pregnancy disability leave or transfer, and the anticipated timing and duration of the leave or transfer.

(2) 30 Days Advance Notice

An employee must provide the employer at least 30 days advance notice before pregnancy disability leave or transfer is to begin if the need for the leave or transfer is foreseeable because of pregnancy. The employee shall consult with the employer and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to the operations of the employer. Any such scheduling, however, shall be subject to the approval of the health care provider of the employee.

- (3) When 30 Days Not Practicable
- If 30 days advance notice is not practicable, such as because of a lack of knowledge of approximately when leave or transfer will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.
- (4) Prohibition Against Denial of Leave or Transfer in Emergency or Unforeseeable Circumstances

An employer shall not deny a pregnancy disability leave or transfer, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide advance notice of the need for the leave or transfer.

(5) Employer Obligation to Inform Employees of Notice Requirement An employer shall give its employees reasonable advance notice of any notice requirements which it adopts. The employer may incorporate its notice requirements in the general notice requirements in section 7291.16 and such incorporation shall constitute "reasonable advance notice." Failure of the employer to give or post such notice(s) shall preclude the employer from taking any adverse action against the employee, including denying pregnancy disability leave, for failing to furnish the employer with advance notice of a need to take pregnancy disability leave.

(6) Employer Response to Leave or Transfer Request

The employer shall respond to the leave or transfer request as soon as practicable and in any event no later than ten calendar days after receiving

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the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

### (b) Medical Certification

As a condition of granting a pregnancy disability leave or transfer, the employer may require medical certification, as defined in section 7291.2, subdivision (d), if the employer requires certification of other similarly situated employees. If the certification satisfies the requirements of section 7291.2, subdivision (d), the employer must accept it as sufficient. Upon expiration of the time period which the health care provider originally estimated that the employee needed, the employer may require the employee to obtain recertification if additional time is requested if the employer has similar requirements for other similarly situated employees.

- (1) The employer may not ask the employee to provide additional information beyond that allowed by these regulations.
- (2) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information requested.
  - (c) Release to Return to Work

As a condition of an employee's return from pregnancy disability leave or transfer, the employer may require that the employee obtain a release to "return-to-work" from her health care provider stating that she is able to resume her original job duties only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12940, subd. (a), 12945, subd. (b)(2), Government Code; FMLA, 29 U.S.C. §2601, et seq., and FMLA regulations, 29 CFR 825.

#### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.11. Terms of Pregnancy Disability Leave.

### (a) Paid Leave

An employer is not required to pay an employee during a pregnancy disability leave except:

- (1) If the employer pays for other temporary disability leaves.
- (A) A non–Title VII employer with five to 14 employees must pay an employee disabled by pregnancy only six weeks of accrued, paid leave for a normal pregnancy regardless of its paid leave policy for other disabled employees.
- 1) A "six week leave," means the equivalent of six of the employee's normally scheduled workweeks. For a full time employee working five eight-hour days per week, this means 30 working and/or paid eight hour days of leave entitlement. For employees who work less than full time, or who work full time but on alternative work schedules, the number of working days which constitutes "six weeks" is calculated on a pro rata or proportional basis.
- 2) This exception does not apply to any employee disabled by pregnancy that is not normal as defined at section 7291.2, subdivision (n).
  - (b) Accrued Time Off
  - (1) Sick Leave

An employer may require an employee to use, or an employee may elect to use, any accrued sick leave during the otherwise unpaid portion of her pregnancy disability leave.

(2) Vacation Time and Other Accrued Time Off

An employee may elect, at her option, to use any vacation time or other accrued personal time off (including undifferentiated paid time off ("PTO")) that the employee is otherwise eligible to take during the otherwise unpaid portion of the pregnancy disability leave.

(c) Other Benefits and Seniority Accrual

During the period of pregnancy disability leave, the employee is entitled to accrual of seniority and to participate in health plans, employee benefit plans, including life, short-term and long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions

as would apply to any other unpaid disability leave granted by the employer for any reason other than a pregnancy disability.

- (1) If the employer's policy allows seniority to accrue when employees are on paid leave, such as paid sick or vacation leave, and/or unpaid leave, then seniority will accrue during any part of a paid and/or unpaid pregnancy disability leave, consistent with the employer's policy.
- (2) The employee returning from a pregnancy disability leave shall return with no less seniority than the employee had when the leave commenced for purposes of layoff, recall, promotion, job assignment, and seniority—related benefits such as vacation.

### (d) Employee Status

The employee shall retain employee status during the period of the pregnancy disability leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under any collective bargaining agreement or under any employee benefit plan. Benefits must be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, et cetera.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Sections 12940, subd. (a), 12945, subds. (b)(1), (b)(2), Government Code; FMLA, 29 U.S.C. §2601, et seq. and FMLA regulations, 29 CFR 825; Pregnancy Discrimination Act of 1978 (P.L. 95–555, 42 U.S.C. §2000e, §701(k)), an amendment to Title VII of the federal Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.).

#### HISTORY

1. New section filed 7–13–95; operative 8–12–95 (Register 95, No. 28).

### § 7291.12. Relationship Between Pregnancy Leave and FMLA Leave.

(a) A Pregnancy Leave May Also Be a FMLA Leave

If the employer is a covered employer and the employee is eligible for leave under the federal Family Care and Medical Leave Act (FMLA), the employer may be able to count the employee's pregnancy disability leave under this subchapter, up to a maximum of 12 weeks, against her FMLA leave entitlement.

(b) Pregnancy a "Serious Health Condition" under FMLA

Any period of incapacity or treatment due to pregnancy, including prenatal care, is included as a "serious health condition" under FMLA.

(c) Employer Obligation under FMLA to Continue Group Health Plan Benefits

During any part of the pregnancy disability leave which is also a FMLA leave, if the employer provides health benefits under any "group health plan," the employer may have a FMLA obligation to continue providing such benefits.

### (d) FMLA Coverage

In general, only employees working for employers with 50 or more employees are eligible to take a family care leave under FMLA. For more specifics on rights and obligations under FMLA, consult the FMLA regulations regarding family care and medical leave (Title 29, Part 825 of the Code of Federal Regulations, issued January 6, 1995).

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Section 12940, subd. (b)(2), Government Code; FMLA, 29 U.S.C. §2601, et seq.; and FMLA regulations, 29 CFR 825.

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.13. Relationship Between CFRA and Pregnancy Leaves.

(a) Separate and Distinct Entitlements

The right to take a pregnancy disability leave under Government Code section 12945, subdivision (b)(2), and these regulations is separate and distinct from the right to take a CFRA leave under the California Family Rights Act, Government Code sections 12945.1 and 12945.2.

(b) "Serious Health Condition" - Pregnancy

An employee's own disability due to pregnancy, childbirth or related medical conditions is not included as a "serious health condition" under CFRA.

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(c) CFRA Leave after Pregnancy Disability Leave

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At the end of the employee's period(s) of pregnancy disability, or at the end of four months pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 workweeks for reason of the birth of her child, if the child has been born by this date. There is no requirement that either the employee or child have a serious health condition in order for the employee to take CFRA leave. There is also no requirement that the employee no longer be disabled by her pregnancy before taking CFRA leave for reason of the birth of her child.

(1) As provided in section 7297.6, subdivision (c)(1), where an employee has utilized four months of pregnancy disability leave prior to the birth of her child, and her health care provider determines that a continuation of the leave is medically necessary, an employer may, but is not required to, allow an eligible employee to utilize CFRA leave prior to the birth of her child. No employer shall, however, be required to provide more CFRA leave than the amount to which the employee is otherwise entitled.

### (d) Maximum Entitlement

The maximum possible combined statutory leave entitlement for CFRA/FMLA employees for both pregnancy disability leave (under FMLA and Government Code section 12945, subdivision (b)(2)) and CFRA leave for reason of the birth of the child is four months and 12 workweeks. This assumes that the employee is disabled by pregnancy for four months and then requests, and is eligible for, a 12–week CFRA leave for reason of the birth of her child.

### (e) CFRA Coverage

In general, employers who are covered by CFRA and employees who are eligible to take CFRA leave are the same as under FMLA. For more specifics on rights and obligations under CFRA, consult the CFRA regulations (Cal. Code of Regs., tit. 2, §7297.0, et seq.).

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Section 12940, subd. (b)(2), Government Code; FMLA, 29 U.S.C. §2601, et seq.; and FMLA regulations, 29 CFR 825.

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.14. Retaliation.

In addition to the retaliation prohibited by Government Code section 12940, subdivision (f), and section 7287.8 of the regulations, it shall be an unlawful employment practice for any person to discharge, fine, suspend, expel, punish, refuse to hire, or otherwise discriminate against any individual, except as otherwise permitted in this subchapter, because:

- (a) of the individual's pregnancy and/or
- (b) because that individual has exercised her right to take a pregnancy disability leave or transfer and/or
- (c) because that individual has given information or testimony regarding her pregnancy disability leave, in any inquiry or proceeding related to any right guaranteed under this subchapter.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Section 12940, subd. (f), Government Code; California Code of Regulations, title 2, section 7287.8; FMLA, 29 U.S.C. §2601, et seq.; and FMLA regulations, 29 CFR 825.

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.15. Remedies.

Upon determining that an employer has violated Government Code sections 12940, 12943, or 12945, the Commission may order any remedy available under Government Code section 12970, and section 7286.9 of the regulations. The remedy, however, for a violation of section 7291.16, subdivision (b), (failure to provide notice) shall be an order that the employer provide such notice.

NOTE: Authority cited: Section 12935, subd. (a), Government Code. Reference: Section 12970, Government Code.

### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7291.16. Notice of Right to Request Pregnancy Disability Leave or Transfer.

### (a) Employers to Post Notice

All employers shall provide notice to their employees of the right to request pregnancy disability leave or transfer under the Fair Employment and Housing Act as specified at section 7291.16, subdivisions (d) and (e) and as contained in "Notice A" and "Notice B". Employers shall post the appropriate notice in a conspicuous place or places where employees tend to congregate. If the employer publishes an employee handbook which describes other kinds of temporary disability leaves or transfers available to its employees, that employer shall include a description of pregnancy disability leave or transfer in the next edition of its handbook which it publishes following adoption of these regulations. If an employer qualifies as a CFRA employer, the employer may include both pregnancy disability leave and CFRA leave requirements in a single notice. An employer is also required to give an employee a copy of the appropriate notice as soon as practicable after the employee tells the employer of her pregnancy or sooner if the employee inquires about pregnancy disability leaves or transfers.

### (b) Employers to Give Notice

Employers are also encouraged to give a copy of the notice to each current and new employee, ensure that copies are otherwise available to each current and new employee, and disseminate the notice in any other way.

(c) Non-English Speaking Workforce

Any CFRA—covered employer whose work force at any facility or establishment contains ten percent or more of persons who speak a language other than English as their primary language shall translate the notice into the language or languages spoken by this group or these groups of employees.

### (d) "Notice A"

The text below in "Notice A" contains only the minimum requirements of the Fair Employment and Housing Act's provisions regarding pregnancy, childbirth or related medical conditions. This Notice is suitable for use by employers with less than 50 employees and who are therefore not subject to CFRA or FMLA. Nothing in this notice requirement prohibits an employer from providing a leave policy which is more generous than that required by this act if that more generous policy is provided to all similarly situated disabled employees. At employer may provide its own notice of its own policy. Employers may develop their own notice or they may choose to use the text provided below, unless it does not accurately reflect their own policy.

### (e) "Notice B"

The text below in "Notice B" combines notice of both an employee's CFRA leave rights and pregnancy disability leave rights. Adoption of this notice, or a comparable notice, satisfies the employer's notice obligations under both this subchapter and section 7297.9 of the regulations. This notice is suitable for use by all employers with 50 employees or more.

### "NOTICE A"

### PREGNANCY DISABILITY LEAVE

Under the California Fair Employment and Housing Act (FEHA), if you are disabled by pregnancy, childbirth or related medical conditions, you are eligible to take a pregnancy disability leave (PDL). If you are affected by pregnancy or a related medical condition, you are also eligible to transfer to a less strenuous or hazardous position or to less strenuous or hazardous duties, if this transfer is medically advisable.

- The PDL is for any period(s) of actual disability caused by your pregnancy, childbirth or related medical conditions up to four months (or 88 work days for a full time employee) per pregnancy.
- The PDL does not need to be taken in one continuous period of time but can be taken on an as-needed basis.
- Time off needed for prenatal care, severe morning sickness, doctorordered bed rest, childbirth, and recovery from childbirth would all be covered by your PDL.

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- Generally, we are required to treat your pregnancy disability the same as we treat other disabilities of similarly situated employees. This affects whether your leave will be paid or unpaid.
  - You may be required to obtain a certification from your health care provider of your pregnancy disability or the medical advisability for a transfer. The certification should include:
  - 1) the date on which you become disabled due to pregnancy or the date of the medical advisability for the transfer;
  - 2) the probable duration of the period(s) of disability or the period(s) for the advisability of the transfer; and,
  - 3) a statement that, due to the disability, you are unable to work at all or to perform any one or more of the essential functions of your position without undue risk to yourself, the successful completion of your pregnancy or to other persons or a statement that, due to your pregnancy, the transfer is medically advisable.
- At your option, you can use any accrued vacation or other accrued time off as part of your pregnancy disability leave before taking the remainder of your leave as an unpaid leave. We may require that you use up any available sick leave during your leave. You may also be eligible for state disability insurance for the unpaid portion of your leave.
- Taking a pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave, the impact of the leave on your seniority and benefits, and our policy for other disabilities, please contact

### "NOTICE B"

### FAMILY CARE AND MEDICAL LEAVE (CFRA LEAVE) AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse.

Even if you are not eligible for CFRA leave, if disabled by pregnancy, childbirth or related medical conditions, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA-eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement to the same or to a comparable position at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 days advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for your self or of a family member). For events which are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave.

Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy or your own serious health condition or certification from the health care provider of your child, parent, or spouse who has a serious health condition before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or a reduced work schedule.

If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact

NOTE: Authority cited: Sections 12935, subd. (a), Government Code. Reference: Section 12940, subd. (i), Government Code; FMLA, 29 U.S.C. §2601, et seq.; and FMLA regulations, 29 CFR 825.

#### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

# Subchapter 7. Marital Status Discrimination

### § 7292.0. General Prohibition Against Discrimination on the Basis of Marital Status.

- (a) Statutory Source. These regulations are adopted by the Fair Employment and Housing Commission pursuant to Section 1420 of the Labor Code (Section 12940 of the Government Code).
- (b) Statement of Purpose. The purpose of the law prohibiting marital status discrimination is to make it unlawful for an employer or other covered entity to deny or grant employment benefits for the reason that an applicant or employee is either married or unmarried.
- (c) Incorporation of General Regulations. These regulations pertaining to discrimination on the basis of marital status incorporate each of the provisions of Subchapters 1 and 2 of Chapter 2, unless a provision is specifically excluded or modified.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### § 7292.1. Definitions.

- (a) "Marital Status." An individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state.
- (b) "Spouse." A partner in marriage as defined in Civil Code Section 4100

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### HISTORY

1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7292.2. Establishing Marital Status Discrimination.

Marital status discrimination may be established by showing that an applicant or employee has been denied an employment benefit by reason of:

- (a) The fact that the applicant or employee is not married;
- (b) An applicant's or employee's "single" or "married" status, or
- (c) The employment or lack of employment of an applicant's or employee's spouse.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### HISTORY

1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7292.3. Defenses.

Any defense permissible under Subchapter 1 is applicable to this subchapter, in addition to any other defense provided herein.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420(a), 1420(a)(3), Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### § 7292.4. Pre-Employment Practices.

- (a) Impermissible Inquiries. It is unlawful to ask an applicant to disclose his or her marital status as part of a pre-employment inquiry unless pursuant to a permissible defense.
- (b) Request for Names. For business reasons other than ascertaining marital status, an applicant may be asked whether he or she has ever used

another name, e.g., to enable an employer or other covered entity to check the applicant's past work record.

(c) Employment of Spouse. It is lawful to ask an applicant to state whether he or she has a spouse who is presently employed by the employer, but this information may not be used as a basis for an employment decision except as stated below.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### § 7292.5. Employee Selection.

- (a) Employment of Spouse. An employment decision shall not be based on whether an individual has a spouse presently employed by the employer except in accordance with the following criteria:
- (1) For business reasons of supervision, safety, security or morale, an employer may refuse to place one spouse under the direct supervision of the other spouse.
- (2) For business reasons of supervision, security or morale, an employer may refuse to place both spouses in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples than for other persons.
- (b) Accommodation for Co–Employees Who Marry. If co–employees marry, an employer shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security, or morale.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921 and 12940, Government Code.

### HISTORY

- 1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- Editorial correction of NOTE filed 4–23–82; designated effective 6–1–82 (Register 82, No. 17).

### § 7292.6. Terms, Conditions and Privileges of Employment.

- (a) Fringe Benefits.
- (1) The availability of benefits to any employee shall not be based on the employee's marital status. However:
- (A) Bona fide fringe benefit plans or programs may provide benefits to an employee's spouse or dependents;
- (B) Such bona fide fringe benefit plans or programs may decline to provide benefits to any individual who is not one of the following: an employee of the employer, a spouse of an employee of the employer, or a dependent of an employee of the employer.
- (2) Insofar as an employment practice discriminates against individuals on the basis of marital status, fringe benefits shall not be conditioned upon whether an employee is "head of household," "principal wage earner," "secondary wage earner," or other similar status.
  - (b) Inter-Personal Conduct.
- (1) An employer or other covered entity shall not use job responsibilities such as travel, entertainment, or other non-office hour duties as a justification for discriminating on the basis of marital status.
- (2) It is unlawful to require a married female applicant or employee to use her husband's name.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

# Subchapter 8. Religious Creed Discrimination

### § 7293.0. General Prohibition Against Religious Creed Discrimination.

(a) Statutory Source. These regulations concerning religious discrimination are adopted by the Commission pursuant to Section 1420 of the Labor Code. (Section 12940 of the Government Code.)

- (b) Statement of Purpose. The freedom to worship as one believes is a basic human right. To that end, the accommodation to religious pluralism is an important and necessary part of our society. Questions of religious discrimination and accommodation to the varied religious practices of the people of the State of California often arise in complex and emotionally charged situations; therefore, each case must be reviewed on an individual basis to best balance often contradictory social needs.
- (c) Incorporation of General Regulations. These regulations incorporate all of the provisions of Subchapters 1 and 2 of Chapter 2, unless specifically excluded or modified.

### § 7293.1. Establishing Religious Creed Discrimination.

"Religious creed" includes any traditionally recognized religion as well as beliefs, observances, or practices which an individual sincerely holds and which occupy in his or her life a place of importance parallel to that of traditionally recognized religions. Religious creed discrimination may be established by showing:

- (a) Employment benefits have been denied, in whole or in part, because of an applicant's or employee's religious creed or lack of religious creed.
- (b) The employer or other covered entity has failed to reasonably accommodate the applicant's or employee's religious creed despite being informed by the applicant or employee or otherwise having become aware of the need for reasonable accommodation.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

#### HISTORY

1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7293.2. Defenses.

Any permissible defense set forth in Subchapter 1 shall be applicable to this Subchapter.

NOTE: Authority cited: Section 1418(a), Labor Code. Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

### § 7293.3. Reasonable Accommodation.

An employer or other covered entity shall make accommodation to the known religious creed of an applicant or employee unless the employer or other covered entity can demonstrate that the accommodation is unreasonable because it would impose an undue hardship.

- (a) Reasonable accommodation may include, but is not limited to, job restructuring, job reassignment, modification of work practices, or allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances.
- (b) In determining whether a reasonable accommodation would impose an undue hardship on the operations of an employer or other covered entity, factors to be considered include, but are not limited to:
- (1) The size of the relevant establishment or facility with respect to the number of employees, the size of budget, and other such matters;
- (2) The overall size of the employer or other covered entity with respect to the number of employees, number and type of facilities, and size of budget;
- (3) The type of the establishment's or facility's operation, including the composition and structure of the workforce or membership;
- (4) The type of the employer's or other covered entity's operation, including the composition and structure of the workforce or membership;
  - (5) The nature and cost of the accommodation involved;
- (6) Reasonable notice to the employer or other covered entity of the need for accommodation; and
  - (7) Any available reasonable alternative means of accommodation.
- (c) Reasonable accommodation includes, but is not limited to, the following specific employment policies or practices:
- (1) Interview and examination times. Scheduled times for interviews, examinations, and other functions related to employment opportunities shall reasonably accommodate religious practices.

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- (2) Dress Standards. Dress standards or requirements for personal appearance shall be flexible enough to take into account religious practices.
- (3) Union Dues. An employer or union shall not require membership from any employee or applicant whose religious creed prohibits such membership. An applicant's or employee's religious creed shall be reasonably accommodated with respect to union dues.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920, 12921, 12940, Government Code.)

#### HISTORY

 Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

### § 7293.4. Pre-Employment Practices.

Pre-employment inquiries regarding an applicant's availability for work on weekends or evenings shall not be used as a pretext for ascertaining his or her religious creed, nor shall such inquiry be used to evade the requirement of reasonable accommodation. However, inquiries as to the availability for work on weekends or evenings are permissible where reasonably related to the normal business requirements of the job in question.

NOTE: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, Labor Code. (Sections 12920. 12921, 12940, Government Code.)

### Subchapter 9. Disability Discrimination

### § 7293.5. General Prohibitions Against Discrimination on the Basis of Disability.

- (a) Statutory Source. These regulations are adopted by the Commission pursuant to Sections 12926 and 12940 of the Government Code.
- (b) Statement of Purpose. The Fair Employment and Housing Commission is committed to ensuring each individual employment opportunities commensurate with his or her abilities. These regulations are designed to assure discrimination—free access to employment opportunities notwithstanding any individual's actual or perceived disability.
- (c) Incorporation of General Regulations. These regulations governing discrimination on the basis of disability incorporate each of the provisions of Subchapters 1 and 2 of Chapter 2, unless specifically excluded or modified.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code.

### HISTORY

- 1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- Change without regulatory effect of subsection (a) and NOTE (Register 86, No. 45).
- Change without regulatory effect amending subchapter 9 heading, section heading, subsections (b)–(c) and Note filed 7–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

### § 7293.6. Definitions.

As used in this subchapter, the following definitions apply:

- (a) "Disability" means and includes:
- (1) "Physical disability," as defined in Government Code Section 12926, subdivision (k), and Section 7293.6, subdivision (e), herein; and
- (2) "Mental disability," as defined in Government Code Section 12926, subdivision (i), and Section 7293.6, subdivision (f), herein; and
- (3) "Medical condition," as defined in Government Code Section 12926, subdivision (h), and Section 7293.6, subdivision (g), herein; and
- (4) "Disability," as used in the Americans with Disabilities Act of 1990 (Public Law 101–336) ("ADA"), if:
- (A) the ADA definition of "disability" would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k) of Government Code Section 12926; or
- (B) the ADA definition of "disability" would include any medical condition not included within subdivision (i) or (k) of Government Code Section 12926.

- (b) "Disability" does not include:
- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
  - (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from current illegal use of drugs.
- (c) Homosexuality and bisexuality are not impairments and as such are not disabilities.
- (d) The unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a physical disability or a mental disability.
  - (e) "Physical disability"
- (1) "Physical disability" includes, but is not limited to, all of the following:
- (A) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
- 1) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
  - 2) Limits an individual's ability to participate in major life activities.
- a) "Major Life Activities" are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Primary attention is to be given to those life activities that affect employability, or otherwise present a barrier to employment or advancement.
- (B) Any other health impairment not described in paragraph (A) that requires special education or related services.
- (C) Being regarded as having or having had a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (A) or (B).
- (D) Being regarded as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (A) or (B).
- (2) It is the intent of the Legislature that the definition of "physical disability" in Government Code Section 12926, subdivision (k), and in this subdivision, shall have the same meaning as the term "physical handicap" formerly defined by Government Code Section 12926 and construed in *American National Ins. Co. v. Fair Employment & Housing Com.*, (1982) 32 Cal.3d 603.
- (f) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (g) "Medical condition" includes any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code and; *American National Ins. Co. v. Fair Employment and Housing Com.* (1982) 32 Cal. 3d 603, 608–10 and; Americans with Disabilities Act of 1990 (Public Law 101–336) (42 U.S.C.A. §12101, et seq.).

### HISTORY

- 1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Change without regulatory effect repealing former subsection (f) which defined the term "health impairment which requires special education or related services" by including citations to definitions of "physically handicapped" contained in Education Code Sections 1850, 56700, 56701, 78701 and 78702 because the cross referenced definitions in the Education Code have been repealed, relettering of former subsections (g)–(k) to subsections (f)–(j) and correction of NOTE (Register 86, No. 45).
- Amendment of subsections (a) and repealer of subsection (j) filed 4–22–88; operative 4–22–88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 18).
- Change without regulatory effect amending section and Note filed 7–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29)

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5. Editorial correction of subsection (g) (Register 95, No. 34).

### § 7293.7. Establishing Disability Discrimination.

Disability discrimination is established by showing that an employment practice denies, in whole or in part, an employment benefit to an individual because he or she is an individual with a disability.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code.

#### HISTORY

- 1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Change without regulatory effect of NOTE (Register 86, No. 45).
- 3. Amendment filed 4-22-88; operative 4-22-88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 18).
- 4. Change without regulatory effect amending section heading and section filed 7-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

### § 7293.8. Defenses.

- (a) In addition to any other defense provided herein, any defense permissible under Subchapter 1 shall be applicable to this subchapter.
- (b) Inability to Perform. It is a permissible defense for an employer or other covered entity to demonstrate that, after reasonable accommodation has been made, the applicant or employee cannot perform the essential functions of the position in question because of his or her disability.
- (c) Health or Safety of an Individual With a Disability. It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation the applicant or employee cannot perform the essential functions of the position in question in a manner which would not endanger his or her health or safety because the job imposes an imminent and substantial degree of risk to the applicant or employee.
- (d) Health and Safety of Others. It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation has been made, the applicant or employee cannot perform the essential functions of the position in question in a manner which would not endanger the health or safety of others to a greater extent than if an individual without a disability performed the job.
- (e) Future Risk. However, it is no defense to assert that an individual with a disability has a condition or a disease with a future risk, so long as the condition or disease does not presently interfere with his or her ability to perform the job in a manner that will not immediately endanger the individual with a disability or others, and the individual is able to safely perform the job over a reasonable length of time. "A reasonable length of time" is to be determined on an individual basis.
- (f) Factors to be considered when determining the merits of the defenses enumerated in Section 7293.8(c)–(e) include, but are not limited
  - (1) Nature of the disability;
- (2) Length of the training period relative to the length of time the employee is expected to be employed;
- (3) Type of time commitment, if any, routinely required of all other employees for the job in question; and
  - (4) Normal workforce turnover.
- (g) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.
- (1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:
- (A) The function may be essential because the reason the position exists is to perform that function.
- (B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
- (C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
- (2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

- (A) The employer's judgment as to which functions are essential.
- (B) Written job descriptions prepared before advertising or interviewing applicants for the job.
  - (C) The amount of time spent on the job performing the function.
- (D) The consequences of not requiring the incumbent to perform the function.
  - (E) The terms of a collective bargaining agreement.
  - (F) The work experiences of past incumbents in the job.
  - (G) The current work experience of incumbents in similar jobs.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code.

### HISTORY

- 1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25)
- Change without regulatory effect of NOTE (Register 86, No. 45).
   Amendment of subsections (b)–(f) filed 4–22–88; operative 4–22–88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 18).
- 4. Change without regulatory effect amending subsections (b)–(e) and (f)(1), new subsections (g)-(g)(2)(G), and amendment of Note filed 7-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

### § 7293.9. Reasonable Accommodation.

Any employer or other covered entity shall make reasonable accommodation to the disability of any individual with a disability if the employer or other covered entity knows of the disability, unless the employer or other covered entity can demonstrate that the accommodation would impose an undue hardship.

- (a) Examples of Reasonable Accommodation. Reasonable accommodation may, but does not necessarily, include, nor is it limited to, such measures as:
- (1) Accessibility. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- (2) Job Restructuring. Job restructuring, reassignment to a vacant position, part-time or modified work schedules, acquisition or modification of equipment or devices, adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar actions.
- (b) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:
  - (1) the nature and cost of the accommodation needed;
- (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility;
- (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities;
- (4) the type of operations, including the composition, structure, and functions of the workforce of the entity;
- (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.
- (c) Accessibility Standards. To comply with Section 7293.9(a), the design, construction or alteration of premises shall be in conformance with the standards set forth by the Division of the State Architect in the State Building Code, Title 24, pursuant to Chapter 7 (commencing with Section 4450), Division 5 of Title 1 of the Government Code and Part 5.5 (commencing with Section 19955) and Division 13 of the Health and Safety Code.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code.

### HISTORY

- 1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25)
- 2. Editorial correction of NOTE filed 4-23-82; designated effective 6-1-82 (Register 82, No. 17).
- Amendment filed 4-22-88; operative 4-22-88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 18).
- 4. Change without regulatory effect amending section and NOTE filed 7-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No.

**Page 348** Register 95, No. 38; 9-22-95 5. Editorial correction of subsection (a)(2) (Register 95, No. 38).

### § 7294.0. Pre-Employment Practices.

- (a) Recruitment and Advertising.
- (1) Employers and other covered entities engaged in recruiting activities shall consider individuals with disabilities on an equal basis with individuals without disabilities for all jobs unless pursuant to a permissible defense.
- (2) It is unlawful to advertise or publicize an employment benefit in any way which discourages or is designed to discourage individuals with disabilities to a greater extent than individuals without disabilities.
  - (b) Applications.
- (1) An employer or other covered entity must consider applications from individuals with disabilities equally with applications from individuals without disabilities. Where applications are being accepted in the normal course of business, an application from an individual with a disability must be accepted.
- (2) Prohibited Inquiries. It is unlawful to ask general questions on disability in an application form or pre–employment questionnaire or in the course of the selection process. Examples of prohibited inquiries are:
  - (A) "Do you have any particular disabilities?"
- (B) "Have you ever been treated for any of the following diseases or conditions?"
- (C) "Are you now receiving or have you ever received Workers Compensation?"
- (3) Permissible Job—Related Inquiry. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101–336) (42 U.S.C.A. §12101 et seq.) and the regulations adopted pursuant thereto, nothing in Government Code Section 12940, subdivision (d), or in this subdivision, shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.
- (c) Interviews. An employer or other covered entity shall make reasonable accommodation to the needs of individuals with disabilities in interviewing situations, e.g., providing interpreters for the hearing–impaired, or scheduling the interview in a room accessible to wheelchairs.
- (d) Medical Examination. An employer may condition an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty in order to determine fitness for the job in question provided that:
- (1) All entering employees in similar positions are subjected to such an examination.
- (2) Where the results of such medical examination would result in disqualification, an applicant or employee may submit independent medical opinions for consideration before a final determination on disqualification is made
- (3) The results are to be maintained on separate forms and shall be accorded confidentiality as medical records, except that:
- (A) Supervisors and managers may be informed of restrictions on the work or duties of individuals with disabilities and necessary accommodations; and
- (B) First aid and safety personnel may be informed, where appropriate, that the condition might require emergency treatment.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code.

### HISTORY

- 1. Repealer and new section filed 6–20–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Change without regulatory effect of NOTE (Register 86, No. 45).
- 3. Amendment of subsection (a)(1) filed 4–22–88; operative 4–22–88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 18).

- Change without regulatory effect amending subsections (a)(1)–(2), (b)(1)–(2), (b)(3), (c), (d)(3)(A) and Note filed 7–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).
- 5. Editorial correction of subsections (b)(1) and (b)(3) (Register 95, No. 38).

### § 7294.1. Employee Selection.

- (a) Prospective Need for Reasonable Accommodation. An employer or other covered entity shall not deny an employment benefit because of the prospective need to make reasonable accommodation to an individual with a disability.
  - (b) Testing.
- (1) An employer or other covered entity shall not make use of any testing criterion that discriminates against individuals with disabilities, unless:
- (A) The test score or other selection criterion used is shown to be jobrelated for the position in question; and
- (B) An alternative job-related test or criterion that does not discriminate against individuals with disabilities is not available.
- (2) Tests of physical agility or strength shall not be used unless the physical agility or strength measured by such test is related to job performance.
- (3) An employer or other covered entity shall select and administer tests concerning employment so as to best ensure that, when administered to any individual, including an individual with a disability, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure rather than reflecting the applicant's or employee's disability, except when those skills are the factors that the tests purport to measure. To accomplish this end, reasonable accommodation must be made in testing conditions. For example:
  - (A) The test site must be accessible to applicants with a disability.
- (B) For blind persons, an employer or other covered entity might translate written tests into Braille, provide or allow the use of a reader, or provide oral presentation of the test.
- (C) For quadriplegic individuals, an employer or other covered entity might provide or allow someone to write for the applicant or to allow oral responses to written test questions.
- (D) For individuals with a hearing impairment, an employer or other covered entity might provide or allow the services of an interpreter.
- (E) For individuals whose disabilities interfere with their ability to communicate, an employer or other covered entity might allow additional time to complete the examination.
- (F) Alternate tests or individualized assessments may be necessary where test modification is inappropriate. Competent advice should be sought before attempting such modification since the validity of the test may be affected.
- (4) Where reasonable accommodation is appropriate, an employer shall permit the use of readers, interpreters, or similar supportive individuals or instruments.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code.

### HISTORY

- Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).
- 2. Change without regulatory effect of NOTE (Register 86, No. 45).
- 3. Change without regulatory effect amending subsections (a), (b)(1), (b)(1)(B), (b)(3), (b)(3)(A), (b)(3)(E) and NOTE filed 7–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

### § 7294.2. Terms, Conditions and Privileges of Employment.

(a) Fringe Benefits. It shall be unlawful to condition any employment decision regarding an applicant or employee with a disability upon the waiver of any fringe benefit.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code.

### HISTORY

1. Change without regulatory effect of NOTE (Register 86, No. 45).

2. Change without regulatory effect amending subsection (a) and NOTE filed 7–17–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

### Subchapter 11. Age Discrimination

### § 7295.0. General Prohibition Against Discrimination on the Basis of Age over the Age of Forty.

- (a) Statement of Purpose. The purpose of the law prohibiting age discrimination in employment is to guarantee all protected individuals 40 or over employment opportunities commensurate with their abilities. These regulations are promulgated to assure that employment opportunities for those protected persons over the age of forty are based upon their abilities and are not conditioned upon age-based stereotypes and unsupported generalizations about their qualifications or job performance. In addition, these regulations are promulgated to clarify when the use of mandatory retirement programs which are based upon age over the age of forty is unlawful.
- (b) Incorporation of General Regulations. These regulations pertaining to discrimination on the basis of age incorporate each of the provisions of Subchapters 1 and 2 of Chapter 2, unless a provision is specifically excluded or modified.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940, 12941 and 12942, Government Code.

#### HISTORY

- 1. Editorial renumbering of Article 11 (Sections 295.0–296.4) of Chapter 3, Title 8 to Subchapter 11 (Sections 7295.0–7296.4) of Division 4, Title 2 (Register 81, No. 3).
- 2. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20)

### § 7295.1. Definitions.

As used in this article the following definitions of terms apply, unless the context in which they are used indicates otherwise:

- (a) "Employer" refers to all employers, public and private, as defined in Government Code Section 12926, except employers mandatorily or voluntarily subject to Government Code Sections 20983.5, 20983.6, 21258.1, 31671.03 or 45346, or subject to Education Code Section 23922.
- (b) "Public employer" refers to public agencies as defined in Government Code Sections 31204 and 20009.
- (c) "Private employer" refers to all employers not defined in subsection (b) above.
- (d) "Retirement or Pension Program" refers to any plan, program or policy of an employer which is in writing and has been communicated to eligible or affected employees, which is intended to provide an employee with income upon retirement (this may include pension plans, profit—sharing plans, money—purchase plans, tax—sheltered annuities, employer sponsored Individual Retirement Accounts, employee stock ownership plans, matching thrift plans, or stock bonus plans or other forms of defined benefit or defined contribution plans).
- (e) "Collective Bargaining Agreement" refers to any collective bargaining agreement between an employer and a labor organization which is in writing
- (f) "Normal Retirement Date or NRD" refers to one of the following dates:
- (1) for employees participating in a private employee pension plan regulated under the federal Employee Retirement Income Security Act of 1974, the NRD refers to the time a plan participant reaches normal retirement age under the plan or refers to the later of either the time a plan participant reaches 65 or the tenth anniversary of the time a plan participant commenced participation in the plan;
- (2) for employees not described under (1) whose employers have a written retirement policy or whose employers are parties to a collective bargaining agreement which specifies retirement practices, the NRD refers to the normal retirement time or age specified in such a policy or agreement; or

- (3) for employees not described under either (1) or (2) the NRD refers to the last calendar day of the month in which an employee reaches his or her seventieth, 70th, birthday.
  - (g) (Reserved.)
  - (h) "Basis of Age" or "Ground of Age" refers to age over forty.
- (i) "Over Forty" refers to the chronological age of an individual who has reached his or her fortieth birthday.
- (j) "Age Based Stereotype" refers to generalized opinions about matters including the qualifications, job performance, health, work habits, and productivity of individuals over forty.
- (k) "Employment Benefit" refers to employment benefit as defined in Section 7286.5(f). It also includes a workplace free of harassment as defined in Section 7286.7(b) of Subchapter 2.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12926, 12940, 12941(a) and 12942, Government Code.

### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20)

### § 7295.2. Establishing Age Discrimination.

- (a) Employers. Discrimination on the basis of age may be established by showing that a job applicant's or employee's age over forty was considered in the denial of an employment benefit.
- (b) Employment Agencies, Labor Organizations, and Apprenticeship Training Programs in Which the State Participates. Discrimination on the basis of age may be established against employment agencies, labor organizations, and apprenticeship training programs in which the state participates upon a showing that they have engaged in recruitment, screening, advertising, training, job referral, placement or similar activities which discriminate against an individual or individuals over forty.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12926(c), (d) and (e), and 12941(a), Government Code.

### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7295.3. Defenses.

- (a) Defenses. Generally. In addition to any other defense provided herein, once an inference of employment discrimination on the basis of age has been established, an employer or other covered entity may prove one or more appropriate defenses as generally set forth in Section 7286.7 of Subchapter 2.
- (b) Specific Defenses, Exemptions, Permissible Practices. An employment practice which discriminates on the basis of age is permissible, exempted, or has a valid defense:
- (1) If the practice is otherwise mandated or permitted, by federal or state law which preempts, supersedes, or otherwise takes precedence over the Act;
- (2) If the practice, at the time it occurred, was deemed lawful by the terms of one or more sections of this subchapter;
- (3) If the practice is declared by one or more sections of this subchapter to be permissible or lawful.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12941 and 12942, Government Code.

### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7295.4. Pre-Employment Practices.

- (a) Recruitment and Advertising.
- (1) Recruitment. The provisions of Section 7287.3 (a) are applicable and are incorporated by reference herein.

Generally, during recruitment it is unlawful for employers to refuse to consider applicants because they are over forty years of age. However, it is lawful for an employer to participate in established recruitment programs with high schools, colleges, universities and trade schools. It is also lawful for employers to utilize temporary hiring programs directed at youth, even though such programs traditionally provide disproportionately few applicants who are over forty. However, exclusive screening

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and hiring of applicants provided through the above recruitment or temporary programs will constitute discrimination on the basis of age if the programs are used to evade the Act's prohibition against age discrimination.

(2) Advertising. It is unlawful for an employer to either express a preference for individuals under forty or to express a limitation against individuals over forty when advertising employment opportunities by any means such as the media, employment agencies, and job announcements. NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12941 and 12942, Government Code.

#### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7295.5. Pre–Employment Inquiries, Interviews and Applications.

(a) Pre–Employment Inquiries. Pre–employment inquiries which would result in the direct or indirect identification of persons on the basis of age are unlawful. This provision applies to oral and written inquiries and interviews. (See Section 7287.3(b), which is applicable and incorporated by reference herein.)

Pre-employment inquiries which result in the identification of persons on the basis of age shall not be unlawful when made for purposes of applicable reporting requirements or to maintain applicant flow data provided that the inquiries are made in a manner consistent with Section 7287.0 (and particularly subsection (b) of Subchapter 2.

(b) Applications. It is discrimination on the basis of age for an employer or other covered entity to reject or refuse to seriously and fairly consider the application form, preemployment questionnaire, oral application or the oral or written inquiry of an individual because such individual is over forty. (See Section 7287.3(c), which is applicable and incorporated by reference herein.)

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12941, Government Code.

### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7295.6. Physical or Medical Examination of Applicants and Employees.

- (a) It is not a violation of this subchapter for an employer to require an applicant who is over forty to undergo physical or medical examinations to determine whether or not the applicant meets the job—related physical or medical standards for the position sought so long as such examinations are uniformly and equally required of all applicants for the position, regardless of their age.
- (b) It is not a violation of this subchapter for an employer to require an employee who is over forty to undergo a physical or medical examination at reasonable times and intervals and at the expense of the employer to determine whether or not the employee continues to meet the job—related physical or medical standards for the position held so long as such examinations are uniformly and equally required of all similarly situated employees in the particular job class regardless of their age.
- (c) It is discrimination based on age to require an applicant or employee over forty to meet physical or medical examination standards which are higher then those standards applied to applicants or employees who are below the age of forty and are seeking or holding the same job. NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12941(a), Government Code.

[The next page is 348.3.]

#### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7295.7. Employee Selection.

- (a) Selection. So long as age is not a factor, this subchapter does not preclude an employer from selecting an individual who is in fact better qualified than other applicants, and it does not preclude an employer from hiring an individual on the basis of experience and training superior to other applicants.
- (b) Selection Based Upon Seniority or Prior Service. So long as age is not a factor, it is not a violation of this subchapter for an employer, during the process of selection, to give a candidate who has a record of seniority or time in prior service with that employer preference over a candidate who has no such record or who has less seniority or time in prior service with that employer. However, where candidates for hire have the same record of seniority or time in prior service, it is discrimination based on age, in selecting from among them, to refuse to select a candidate because he or she is over forty.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12941, Government Code.

### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7295.8. Promotions.

- (a) In selecting a candidate for promotion, it is not, itself, a violation of this subchapter, for an employer to limit the group of eligible candidates to members of the employer's existing workforce or to give a preference in selection to an incumbent employee over a candidate who is not an incumbent employee. However, in evaluating or selecting candidates for promotion from among its existing workforce, it is discrimination on the basis of age for an employer to evaluate unequally or to fail to select a candidate who is over forty because of the age of the candidate.
- (b) In selecting a candidate for promotion, it is not, itself, a violation of this subchapter for an employer to promote a candidate under the age of forty in preference to a candidate over forty on the basis of the superior experience and training of the younger candidate, or on the basis of other legitimate reasons, so long as age is not a factor.
- (c) It is discrimination on the basis of age for an employer to deny an employee the opportunity to gain the experience and training necessary to achieve promotion, because such employee is over forty.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12942(a), Government Code.

### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7295.9. Terms, Conditions and Privileges of Employment. (Reserved.)

NOTE: Authority cited: Section 1418(a), Labor Code; Section 12935(a), Government Code. Reference: Sections 1420.1 and 1420.15, Labor Code; Sections 12941 and 12942, Government Code.

### HISTORY

1. Repealer of former Section 7295.9 and new section heading filed 5-12-83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7296.0. Retirement Practices.

- (a) Mandatory Retirement—Generally. Generally, it is discrimination on the basis of age for a private employer to discharge or force the retirement of an employee because such employee has reached a certain chronological age over forty.
- (b) Retirement Plans Generally. Generally, any provision in a private employer's retirement plan, pension plan, collective bargaining agreement or similar plan or agreement which requires mandatory retirement of an employee over forty years of age is unlawful.
- (c) Mandatory Retirement Permitted. Mandatory retirement of the following employees is not unlawful:
- (1) Prior to July 1, 1982, any employee who has attained 65 years of age, and thereafter 70 years of age, and is serving under a contract of un-

limited tenure, or similar arrangement providing for unlimited tenure at an institution of higher education as defined by Section 1201(a) of the Federal Higher Education Act of 1965;

- (2) Any employee who has attained 65 years of age and who for the two year period immediately prior to retirement, was employed in a bona fide executive or high policymaking position, providing that at the time of mandatory retirement, the employee is entitled to receive an immediate non–forfeitable annual retirement benefit from the current employer which equals a minimum of \$27,000.00, and is either derived from one or a combination of plans such as profitsharing, pension, savings, or deferred compensation plans.
- (3) Any employee who has attained 70 years of age and is a physician employed by a professional medical corporation, the articles or bylaws of which provide for compulsory retirement.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12941 and 12942, Government Code.

#### HISTORY

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7296.1. Procedures for Continuing in Employment Past the Normal Retirement Date.

Where a private employer has a private pension or retirement program, the following procedures apply:

- (a) Advisory Notice by the Employer. Private employers must advise their employees who are nearing their normal retirement date that if they intend to continue in employment beyond their NRD, they must file a written notice of this intention. The employer's Advisory Notice should be in writing, and should be provided to the employee no later than ninety (90) days prior to the NRD and no earlier than one hundred and eighty (180) days prior to the NRD. The Advisory Notice to the employee must clearly indicate when his or her Continuation Notice, as described in subsection (b), must be submitted.
- (b) Continuation Notice by the Employee. An employee of a private employer who wishes to continue working beyond his or her NRD must provide a written notification of this intention to the employer not more than forty–five (45) days after the employee receives an Advisory Notice from the employer as described in subsection (a).
- (c) Notice by Employee Following the Normal Retirement Date. An employee continuing in employment past the normal retirement date has an obligation to provide his or her private employer with written notice in advance of the date on which he or she intends to retire from employment. Such notice of retirement should be provided at a reasonable time, no later than sixty (60) days prior to the employee's anticipated date of retirement.
- (d) Notice by Private Employer Following the Normal Retirement Date. Where an employee continues in employment beyond his or her NRD, a private employer does not violate this article by periodically sending a written notice to such employee seeking to determine if the employee intends to continue in employment. However, the initial notice of this kind should not be sent to the employee until at least two years following his or her normal retirement date has elapsed. Subsequent thereto, the notice should not be sent more frequently than on an annual basis. NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12942, Government Code.

### HISTORY

Amendment filed 5-12-83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7296.2. Termination and Disciplinary Actions.

- (a) It is not a violation of this subchapter for an employer to terminate, discharge, dismiss, demote or otherwise discipline an employee over forty who fails to perform the normal functions of his or her position or who fails to conform to the bona fide requirements of his or her position, so long as the performance standards and job requirements do not discriminate against employees over forty.
- (b) Where an employee is continuing in employment beyond his or her normal retirement date, it is not a violation of this subchapter for an em-

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ployer to terminate, force the retirement of, or otherwise discipline such an employee if the employee's job performance no longer satisfies the employer's performance standards. Any such performance standards for quality of work must not be arbitrary and must not be based upon the age of the employee.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12941 and 12942, Government Code.

### **HISTORY**

1. Amendment filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20)

### § 7296.3. Termination and Disciplinary Action.

NOTE: Authority cited: Section 1418(a), Labor Code; Section 12935(a), Government Code. Reference: Sections 1420.1 and 1420.15, Labor Code; Sections 12941 and 12942. Government Code.

#### HISTORY

1. Repealer filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

### § 7296.4. Application of Federal Law.

NOTE: Authority cited: Section 1418(a), Labor Code; Section 12935(a), Government Code. Reference: Sections 1420.1 and 1420.15, Labor Code; Sections 12941 and 12942, Government Code.

### HISTORY

1. Repealer filed 5–12–83; effective thirtieth day thereafter (Register 83, No. 20).

## Subchapter 12. Family Care and Medical Leave

### § 7297.0. Definitions.

The following definitions apply only to this subchapter. The definitions in the federal regulations issued January 6, 1995 (29 CFR Part 825), interpreting the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. §§2601 et seq.) shall also apply to this subchapter, to the extent that they are not inconsistent with the following definitions:

- (a) "Certification" means a written communication from the health care provider of the child, parent, spouse, or employee with a serious health condition to the employer of the employee requesting a family care leave to care for the employee's child, parent or spouse or a medical leave for the employee's own serious health condition.
- (1) For family care leave for the employee's child, parent, or spouse, this certification need not identify the serious health condition involved, but shall contain:
- (A) the date, if known, on which the serious health condition commenced,
  - (B) the probable duration of the condition.
- (C) an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent or spouse, and
- (D) a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse.
- 1) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent or spouse, as well as directly providing, or participating in, the medical care.
- (2) For medical leave for the employee's own serious health condition, this certification need not, but may, at the employee's option, identify the serious health condition involved. It shall contain:
- (A) The date, if known, on which the serious health condition commenced.
  - (B) The probable duration of the condition, and
- (C) A statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position.
- (b) "CFRA" means the Moore–Brown–Roberti California Family Rights Act of 1993. (California Family Rights Act, Gov. Code §§12945.1 and 12945.2.) "CFRA leave" means family care or medical leave taken pursuant to CFRA.

- (c) "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, or a child of an employee who stands in loco parentis to that child, who is either under 18 years of age or an adult dependent child. An adult dependent child is an individual who is 18 years of age or older and who is incapable of self-care because of a mental or physical disability within the meaning of Government Code section 12926, subdivisions (i) and (k).
- (1) "In loco parentis" means in the place of a parent; instead of a parent; charged with a parent's rights, duties, and responsibilities. It does not require a biological or legal relationship.
- (d) "Covered employer" means any person or individual engaged in any business or enterprise in California who directly employs 50 or more persons within any State of the United States, the District of Columbia or any Territory or possession of the United States to perform services for a wage or salary. It also includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. There is no requirement that the 50 employees work at the same location or work full time.
- (1) "Directly employs" means that the employer maintains an aggregate of at least fifty part or full time employees on its payroll(s) for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. The workweeks do not have to be consecutive. The phrase "current or preceding calendar year" refers to the calendar year in which the employee requests the leave or the calendar year preceding this request.
- (2) "Perform services for a wage or salary" excludes independent contractors as defined in Labor Code section 3353 but includes persons who are compensated in whole or in part by commission.
- (e) "Eligible employee" means a full or part time employee working in California with more than 12 months (52 weeks) of service with the employer at any time, and who has actually worked (within the meaning of the Fair Labor Standards Act, 29 CFR Part 785) for the employer at least 1,250 hours during the 12–month period immediately prior to the date the CFRA leave or FMLA leave is to commence.
- (1) Once the employee meets these two eligibility criteria and takes a leave for a qualifying event, the employee does not have to requalify, in terms of the numbers of hours worked, in order to take additional leave for the same qualifying event during the employee's 12–month leave period
- (2) For an employee who takes a pregnancy disability leave which is also a FMLA leave, and who then wants to take CFRA leave for reason of the birth of her child immediately after her pregnancy disability leave, the 12-month period during which she must have worked 1,250 hours is that period immediately preceding her first day of FMLA leave based on her pregnancy, not the first day of the subsequent CFRA leave for reason of the birth of her child.
- (3) In order to be eligible, the employee must also work for an employer who maintains on the payroll, as of the date the employee gives notice of the need for leave, at least 50 part or full time employees within 75 miles, measured in surface miles, using surface transportation, of the worksite where the employee requesting the leave is employed.
- (A) Once the employee meets this eligibility criterion and takes a leave for a qualifying event, the employer may not cut short the leave or deny any subsequent leave taken for the same qualifying event during the employee's 12—month leave period, even if the number of employees within the relevant 75—mile radius falls below 50. In such cases, however, the employee would not be eligible for any subsequent leave requested for a different qualifying event.
- (f) "Employment in the same position" means employment in, or reinstatement to, the original position which the employee held prior to taking a CFRA leave.
- (g) "Employment in a comparable position" means employment in a position which is virtually identical to the employee's original position in terms of pay, benefits, and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar

duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must be performed at the same or geographically proximate worksite from where the employee was previously employed. It ordinarily means the same shift or the same or an equivalent work schedule. It has the same meaning as the term "equivalent position" in FMLA and its implementing regulations.

- (h) "Family care leave" means either:
- (1) Leave of up to a total of 12 workweeks in a 12-month period for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or
- (2) Leave of up to a total of 12 workweeks in a 12-month period to care for a child, parent or spouse of the employee who has a serious health condition, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave.
- (i) "FMLA" means the federal Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq., and its implementing regulations, 29 CFR Part 825, issued January 6, 1995. "FMLA leave" means family care or medical leave taken pursuant to FMLA.
  - (j) "Health care provider" means either:
- (1) an individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code or an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the serious health condition, or
- (2) any other person who meets the definition of others "capable of providing health care services," as set forth in FMLA and its implementing regulations.
- (k) "Medical leave" means leave of up to a total of 12 workweeks in a 12-month period because of an employee's own serious health condition that makes the employee unable to work at all or unable to perform any one or more of the essential functions of the position of that employee. The term "essential functions" is defined in Government Code section 12926, subdivision (f). "Medical leave" does not include leave taken for an employee's pregnancy disability, as defined in (m) below, except as specified below in section 7297.6, subdivision (c)(1).
- (*I*) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child. Parent does not include a parent—in—law.
- (m) "Pregnancy disability leave" means a leave taken for disability on account of pregnancy, childbirth, or related medical conditions, pursuant to Government Code section 12945, subdivision (b)(2), and defined in section 7291.2, subdivision (o) of the regulations.
- (n) "Reinstatement" means "restoration" within the meaning of FMLA and its implementing regulations.
- (o) "Serious health condition" means an illness, injury (including onthe-job injuries), impairment, or physical or mental condition of the employee or a child, parent or spouse of the employee which involves either:
- (1) inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential health care facility, or
- (2) continuing treatment or continuing supervision by a health care provider, as detailed in FMLA and its implementing regulations.
- (p) "Spouse" means a partner in marriage as defined in Family Code section 300.

(q) "Twelve workweeks" means the equivalent of twelve of the employee's normally scheduled workweeks. (See also section 7297.3, subdivision (d).)

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Section 12945.2, Government Code; and *J.E. Robinson* v. *FEHC* (1992) 2 Cal.4th 226 [5 Cal.Rptr.2d 782]; Family and Medical Leave Act of 1993, 29 U.S.C. §\$2601 et seq; Code of Federal Regulations, tit. 29, part 825, issued January 6, 1995; Fair Labor Standards Act, 29 U.S.C. section 201 et seq; and 29 CFR part 785.

#### HISTORY

- 1. New subchapter 12 and section filed 2–9–93; operative 3–11–93 (Register 93, No. 7).
- Amendment of subchapter 12 heading, section and Note filed 7–13–95; operative 8–12–95 (Register 95, No. 28).
- 3. Editorial correction of subsection (e) (Register 95, No. 44).

### § 7297.1. Right to CFRA Leave: Denial of Leave; Reasonable Request; Permissible Limitation.

- (a) It is an unlawful employment practice for a covered employer to refuse to grant, upon reasonable request, a CFRA leave to an eligible employee, unless such refusal is justified by the permissible limitation specified below in subdivision (c).
  - (b) Denial of leave.
  - (1) Burden of proof.

Denial of a request for CFRA leave is established if the Department or the employee shows, by a preponderance of the evidence, that the employer was a covered employer, the employee making the request was an eligible employee, the request was for a CFRA qualifying purpose, the request was reasonable, and the employer denied the request for CFRA leave.

(2) Reasonable request.

A request to take a CFRA leave is reasonable if it complies with any applicable notice requirements, as specified in section 7297.4, and if it is accompanied, where required, by a certification, as that term is defined in section 7297.0, subdivision (a).

(c) Limitation on Entitlement.

If both parents are eligible for CFRA leave but are employed by the same employer, that employer may limit leave for the birth, adoption or foster care placement of their child to 12 workweeks in a 12-month period between the two parents. The employer may not limit their entitlement to CFRA leave for any other qualifying purpose. If the parents are unmarried, they may have different family care leave rights under FMLA.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code, Reference: Section 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; and Code of Federal Regulations, tit. 29, part 825

### HISTORY

- 1. New section filed 2-9-93; operative 3-11-93 (Register 93, No. 7).
- 2. Amendment of section heading, section and NOTE filed 7–13–95; operative 8–12–95 (Register 95, No. 28).

# § 7297.2. Right to Reinstatement: Guarantee of Reinstatement; Refusal to Reinstate; Permissible Defenses.

(a) Guarantee of Reinstatement.

Upon granting the CFRA leave, the employer shall guarantee to reinstate the employee to the same or a comparable position, subject to the defenses permitted by section 7297.2, subdivisions (c)(1) and (c)(2), and shall provide the guarantee in writing upon request of the employee. It is an unlawful employment practice for an employer, after granting a requested CFRA leave, to refuse to honor its guarantee of reinstatement to the same or a comparable position at the end of the leave, unless the refusal is justified by the defenses stated in § 7297.2, subdivisions (c)(1) and (c)(2).

- (b) Refusal to reinstate.
- (1) Definite Date of Reinstatement.

Where a definite date of reinstatement has been agreed upon at the beginning of the leave, a refusal to reinstate is established if the Department

or employee proves, by a preponderance of the evidence, that the leave was granted by the employer and that the employer failed to reinstate the employee to the same or a comparable position by the date agreed upon.

(2) Change in Date of Reinstatement.

If the reinstatement date differs from the employer's and employee's original agreement, a refusal to reinstate is established if the Department or employee proves, by a preponderance of the evidence, that the employer failed to reinstate the employee to the same or a comparable position within two business days, where feasible, after the employee notifies the employer of his or her readiness to return, as required by the FMLA regulations.

- (c) Permissible defenses.
- (1) Employment Would Have Ceased

An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the CFRA leave period. An employer has the burden of proving, by a preponderance of the evidence, that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny reinstatement.

(A) If an employee is laid off during the course of taking CFRA leave and employment is terminated, the employer's responsibility to continue CFRA leave, maintain group health plan benefits and reinstate the employee ceases at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise.

(2) "Key Employee."

A refusal to reinstate a "key employee" to his or her same position or to a comparable position is justified if the employer shows, by a preponderance of the evidence, that all of the following conditions exist:

- (A) The employee requesting the CFRA leave is a salaried employee, and
- (B) The employee requesting the leave is among the highest paid ten percent of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed at the time of the leave request, and
- (C) The refusal to reinstate the employee is necessary because the employee's reinstatement will cause substantial and grievous economic injury to the operations of the employer, and
- (D) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines that the refusal is necessary under (C) above, and
- (E) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed in (D) above.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Section 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; and Code of Federal Regulations, tit. 29, part 825

### HISTORY

- 1. New section filed 2-9-93; operative 3-11-93 (Register 93, No. 7).
- 2. Amendment of section heading, section and NOTE filed 7–13–95; operative 8–12–95 (Register 95, No. 28).
- 3. Editorial correction of subsection (a) (Register 95, No. 44).

### § 7297.3. Computation of Time Periods: Twelve Workweeks; Minimum Duration.

- (a) CFRA leave does not need to be taken in one continuous period of time. It cannot exceed more than 12 workweeks total for any purpose in a 12-month period.
- (b) If the leave is common to both CFRA and FMLA, this 12-month period will run concurrently with the 12-month period under FMLA. An employer may choose any of the methods allowed in the FMLA regulations, issued January 6, 1995, 29 CFR Part 825, section 825.200, subdivision (b), for determining the "12-month period" in which the 12 weeks of leave entitlement occurs. The employer must, however, apply the chosen method consistently and uniformly to all employees.

- (c) "Twelve workweeks" as that term is defined in section 7297.0, subdivision (q), means the equivalent of twelve of the employee's normally scheduled workweeks. For eligible employees who work more or less than five days a week, or who work on alternative work schedules, the number of working days which constitutes "twelve weeks" is calculated on a pro rata or proportional basis.
- (1) For example, for a full time employee who works five eight-hour days per week, "twelve workweeks" means 60 working and/or paid eight-hour days of leave entitlement. For an employee who works half time, "twelve workweeks" may mean 30 eight-hour days or 60 four-hour days, or twelve workweeks of whatever is the employee's normal half-time work schedule. For an employee who normally works six eight-hour days, "twelve workweeks" means 72 working and/or paid eight-hour days of leave entitlement.
- (2) If an employee takes leave on an intermittent or reduced work schedule, only the amount of leave actually taken may be counted toward the twelve weeks of leave to which the employee is entitled. For example, if an employee needs physical therapy which requires an absence from work of two hours a week, only those two hours can be charged against the employee's CFRA leave entitlement.
- (3) If a holiday falls within a week taken as CFRA leave, the week is nevertheless counted as a week of CFRA leave. If, however, the employer's business activity has temporarily ceased for some reason and employees generally are not expected to report for work for one or more weeks, (e.g., a school closing for two weeks for the Christmas/New Year holiday or summer vacation or an employer closing the plant for retooling), the days the employer's activities have ceased do not count against the employee's CFRA entitlement.
- (d) Minimum duration for CFRA leaves taken for the birth, adoption, or foster care placement of a child. CFRA leave taken for reason of the birth, adoption, or foster care placement of a child of the employee does not have to be taken in one continuous period of time. Any leave(s) taken shall be concluded within one year of the birth or placement of the child with the employee in connection with the adoption or foster care of the child by the employee. The basic minimum duration of the leave shall be two weeks. However, an employer shall grant a request for a CFRA leave of less than two weeks' duration on any two occasions.
- (e) Minimum duration for CFRA leaves taken for the serious health condition of a parent, child, or spouse or for the serious health condition of the employee. Where CFRA leave is taken for a serious health condition of the employee's child, parent or spouse or of the employee, leave may be taken intermittently or on a reduced work schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. An employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave.
- (1) If an employee needs intermittent leave or leave on a reduced work schedule that is foreseeable based on planned medical treatment for the employee or a family member, the employer may require the employee to transfer temporarily to an available alternative position. This alternative position must have the equivalent rate of pay and benefits, the employee must be qualified for the position, and it must better accommodate recurring periods of leave than the employee's regular job. It does not have to have equivalent duties. Transfer to an alternative position may include altering an existing job to accommodate better the employee's need for intermittent leave or a reduced work schedule.
- (2) CFRA leave, including intermittent leave and/or reduced work schedules, is available to instructional employees of educational establishments and institutions under the same conditions as apply to all other eligible employees.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code; and Stats. 1993, ch. 827, (AB 1460), § 2. Reference: Section 12945.2, Government Code; and Stats. 1993, ch. 827 (AB 1460), § 2; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; and Code of Federal Regulations, tit. 29, part 825

### HISTORY

- 1. New section filed 2–9–93; operative 3–11–93 (Register 93, No. 7).
- 2. Amendment of section heading, section and Note filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7297.4. Requests for CFRA Leave: Advance Notice; Certification; Employer Response.

- (a) Advance Notice.
- (1) Verbal Notice.

An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs CFRA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under CFRA or FMLA, or even mention CFRA or FMLA, to meet the notice requirement; however, the employee must state the reason the leave is needed, such as, for example, the expected birth of a child or for medical treatment. The employer should inquire further of the employee if it is necessary to have more information about whether CFRA leave is being sought by the employee and obtain the necessary details of the leave to be taken.

- (A) Under all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as CFRA or CFRA/FMLA qualifying, based on information provided by the employee or the employee's spokesperson, and to give notice of the designation to the employee.
- (B) Employers may not retroactively designate leave as "CFRA leave" after the employee has returned to work, except under those same circumstances provided for in FMLA and its implementing regulations for retroactively counting leave as "FMLA leave."
  - (2) 30 Days Advance Notice.

An employer may require that employees provide at least 30 days advance notice before CFRA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member. The employee shall consult with the employer and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to the operations of the employer. Any such scheduling, however, shall be subject to the approval of the health care provider of the employee or the employee's child, parent or spouse.

- (3) When 30 Days Not Practicable.
- If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.
- (4) Prohibition Against Denial of Leave in Emergency or Unforeseeable Circumstances.

An employer shall not deny a CFRA leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide advance notice of the need for the leave.

(5) Employer Obligation to Inform Employees of Notice Requirement.

An employer shall give its employees reasonable advance notice of any notice requirements which it adopts. The employer may incorporate its notice requirements in the general notice requirements in section 7297.9 and such incorporation shall constitute "reasonable advance notice." Failure of the employer to give or post such notice shall preclude the employer from taking any adverse action against the employee, including denying CFRA leave, for failing to furnish the employer with advance notice of a need to take CFRA leave.

(6) Employer Response to Leave Request.

The employer shall respond to the leave request as soon as practicable and in any event no later than ten calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

- (b) Medical Certification.
- (1) Serious Health Condition of Child, Parent, or Spouse.

As a condition of granting a leave for the serious health condition of the employee's child, parent or spouse, the employer may require certification of the serious health condition, as defined in section 7297.0, subdivision (a)(1). If the certification satisfies the requirements of section 7297.0, subdivision (a)(1), the employer must accept it as sufficient. Upon expiration of the time period which the health care provider originally estimated that the employee needed to take care of the employee's child, parent or spouse, the employer may require the employee to obtain recertification if additional leave is requested.

(2) Serious Health Condition of Employee.

As a condition of granting a leave for the serious health condition of the employee, the employer may require certification of the serious health condition, as defined in section 7297.0, subdivision (a)(2). Upon expiration of the time period which the health care provider originally estimated that the employee needed for his/her own serious health condition, the employer may require the employee to obtain recertification if additional leave is requested.

- (A) If the employer has reason to doubt the validity of the certification provided by the employee for his/her own serious health condition, the employer may require, at the employer's own expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information in the certification. The health care provider designated or approved by the employer shall not be employed on a regular basis by the employer.
- 1) The employer may not ask the employee to provide additional information beyond that allowed by these regulations.
- 2) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information received.
- (B) In any case in which the second opinion described in (b)(2)(A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by both the employer and the employee, concerning any information in the certification.
- (C) The opinion of the third health care provider concerning the information in the certification shall be considered to be final and shall be binding on the employer and the employee.
- (D) The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, without cost, upon the request of the employee.
- (E) As a condition of an employee's return from medical leave, the employer may require that the employee obtain a release to "return-to-work" from his/her health care provider stating that he/she is able to resume work only if the employer has a uniformly applied practice or policy of requiring such releases from other employees returning to work after illness, injury or disability.
  - (3) Providing Certification.

The employer may require that the employee provide any certification within fifteen calendar days of the employer's request for such certification, unless it is not practicable for the employee to do so despite the employee's good faith efforts. This means that, in some cases, the leave may begin before the employer receives the certification.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, subd. (a), Government Code. Reference: Section 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; and Code of Federal Regulations, tit. 29, part 825.

### HISTORY

- 1. New section filed 2–9–93; operative 3–11–93 (Register 93, No. 7).
- 2. Amendment of section heading, section and NoTE filed 7–13–95; operative 8–12–95 (Register 95, No. 28).
- 3. Editorial correction of subsection (a)(5) and NOTE (Register 95, No. 44).

### § 7297.5. Terms of CFRA Leave.

(a) The following rules apply to the permissible terms of a CFRA leave, to the extent that they are consistent with the requirements of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq. Nothing in these regulations infringes on the employer's obliga-

tions, if any, under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (29 U.S.C. §1161 et seq.) or prohibits an employer from granting CFRA leave on terms more favorable to the employee than those listed below.

(b) Paid Leave.

An employer is not required to pay an employee during a CFRA leave except:

- (1) An employee may elect to use any accrued vacation time or other paid accrued time off (including undifferentiated paid time off ("PTO")), other than accrued sick leave, that the employee is otherwise eligible to take during the otherwise unpaid portion of the CFRA leave.
- (2) Only if the employee asks for leave for what would be a CFRA-qualifying event may an employer require the employee to use any accrued vacation time or other paid accrued time off (including "PTO" time), other than accrued sick leave, that the employee is otherwise eligible to take during the otherwise unpaid portion of the CFRA leave.
- (A) If an employee requests to utilize accrued vacation time or other paid accrued time off without reference to a CFRA-qualifying purpose, an employer may not ask whether the employee is taking the time off for a CFRA-qualifying purpose.
- 1) If the employer denies the employee's request and the employee then provides information that the requested time off is or may be for a CFRA-qualifying purpose, the employer may inquire further into the reasons for the absence. If the absence is CFRA-qualifying, then the rules in section 7297.5, subdivision (b)(1) and (2), above, apply.
- (3) An employer may require the employee to use, or an employee may elect to use, any accrued sick leave that the employee is otherwise eligible to take during the otherwise unpaid portion of a CFRA leave for:
  - (A) the employee's own serious health condition, or
- (B) any other reason if mutually agreed to between the employer and the employee.
- (4) An employer and employee may negotiate for the employee's use of any additional paid or unpaid time off to substitute for the CFRA leave provided by this section.
  - (c) Provision of Health Benefits.
- If the employer provides health benefits under any "group health plan," the employer has an obligation to continue providing such benefits during an employee's CFRA leave, FMLA leave, or both. The following rules apply:
- (1) The employer shall maintain and pay for the employee's health coverage at the same level and under the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.
- (2) This obligation commences on the date leave first begins under FMLA (i.e., for pregnancy disability leaves) or under FMLA/CFRA (i.e., for all other family care and medical leaves). The obligation continues for the duration of the leave(s), up to a maximum of 12 workweeks in a 12-month period.
- (3) A "group health plan" is as defined in section 5000, subdivision (b)(1), of the Internal Revenue Code of 1986. If the employer's group health plan includes dental care, eye care, mental health counselling, et cetera, or if it includes coverage for the employee's dependents as well as for the employee, the employer shall also continue this coverage.
- (4) Although the employer's obligation to continue group health benefits under either FMLA or CFRA, or both, does not exceed 12 workweeks in a 12-month period, nothing shall preclude the employer from maintaining and paying for health care coverage for longer than 12 workweeks.
- (5) An employer may recover the premium that the employer paid for maintaining group health care coverage during any unpaid part of the CFRA leave if both of the following conditions occur:
- (A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired. An employee is deemed to have "failed to return from leave" if he/she works less than 30 days after returning from CFRA leave.

- (B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to CFRA leave, or other circumstances beyond the control of the employee.
  - (d) Other Benefits and Seniority Accrual

During the period of CFRA leave, the employee is entitled to accrual of seniority and to participate in health plans for any additional period of leave not covered by (c) above, and also in any employee benefit plans, including life, short–term or long–term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to any other leave granted by the employer for any reason other than CFRA leave.

- (1) Unpaid CFRA leave for the serious health condition of the employee shall be compared to other unpaid disability leaves whereas unpaid CFRA leaves for all other purposes shall be compared to other unpaid personal leaves offered by the employer.
- (2) If the employer's policy allows seniority to accrue when employees are out on paid leave, such as paid sick or vacation leave, then seniority will accrue during any part of a paid CFRA leave.
- (3) The employee returning from CFRA leave shall return with no less seniority than the employee had when the leave commenced for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.
  - (e) Continuation of Other Benefits.

If the employer has no policy, practice or collective bargaining agreement which requires or authorizes any other type of unpaid personal or disability leave or if the employer's other unpaid personal or disability leaves do not allow for the continuation of benefits during these leaves, an employee taking a CFRA leave shall be entitled to continue to participate in the employer's health plans, pension and retirement plans, supplemental unemployment benefit plans or any other health and welfare employee benefit plan, in accordance with the terms of those plans, during the period of the CFRA leave.

- (1) As a condition of continued coverage of group medical benefits (beyond the employer's obligation during the 12-week period described above in (c)), life insurance, short- or long-term disability plans or insurance, accident insurance, or other similar health and welfare employee benefit plans during any unpaid portion of the leave, the employer may require the employee to pay premiums at the group rate.
- (A) If the employee elects not to pay premiums to continue these benefits, this nonpayment of premiums shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement or any employee benefit plan requiring the payment of premiums.
- (2) An employer is not required to make plan payments to any pension and/or retirement plan or to count the leave period for purposes of "time accrued" under any such plan during any unpaid portion of the CFRA leave. The employer shall allow an employee covered by a pension and/or retirement plan to continue to make contributions, in accordance with the terms of these plans, during the unpaid portion of the leave period.
  - (f) Employee Status.

The employee shall retain employee status during the period of the CFRA leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under any collective bargaining agreement or under any employee benefit plan. Benefits must be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, et cetera.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Section 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; ERISA, 29 U.S.C. §§1001 et seq; and COBRA, 29 U.S.C. §§1161 et seq.

### **HISTORY**

1. New section filed 2–9–93; operative 3–11–93 (Register 93, No. 7).

- 2. Amendment of section heading, section and Note filed 7–13–95; operative 8–12–95 (Register 95, No. 28).
- 3. Editorial correction of subsections (b)(1), (d)(1) and (e)(1) (Register 95, No. 44).

### § 7297.6. Relationship Between CFRA Leave and Pregnancy Disability Leave.

(a) Separate and Distinct Entitlements.

The right to take a CFRA leave under Government Code section 12945.2 is separate and distinct from the right to take a pregnancy disability leave under Government Code section 12945, subdivision (b)(2), and section 7291.2 et seq. of the regulations.

(b) Serious Health Condition - Pregnancy.

An employee's own disability due to pregnancy, childbirth or related medical conditions is not included as a "serious health condition" under CFRA. Any period of incapacity or treatment due to pregnancy, including prenatal care, is included as a "serious health condition" under FMLA.

(c) CFRA Leave after Pregnancy Disability Leave.

At the end of the employee's period(s) of pregnancy disability, or at the end of four months pregnancy disability leave, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 workweeks for reason of the birth of her child, if the child has been born by this date. There is no requirement that either the employee or child have a serious health condition in order for the employee to take CFRA leave. There is also no requirement that the employee no longer be disabled by her pregnancy, childbirth or related medical conditions before taking CFRA leave for reason of the birth of her child.

(1) Where an employee has utilized four months of pregnancy disability leave prior to the birth of her child, and her health care provider determines that a continuation of the leave is medically necessary, an employer may, but is not required to, allow an eligible employee to utilize CFRA leave prior to the birth of her child. No employer shall, however, be required to provide more CFRA leave than the amount to which the employee is otherwise entitled.

### (d) Maximum Entitlement.

The maximum possible combined leave entitlement for both pregnancy disability leave (under FMLA and Government Code section 12945, subdivision (b)(2)) and CFRA leave for reason of the birth of the child (under this subchapter) is four months and 12 workweeks. This assumes that the employee is disabled by pregnancy, childbirth or related medical conditions for four months and then requests, and is eligible for, a 12–week CFRA leave for reason of the birth of her child.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Sections 12945, subd. (b)(2) and 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; and Code of Federal Regulations, tit. 29, part 825.

### HISTORY

- 1. New section filed 2-9-93; operative 3-11-93 (Register 93, No. 7).
- 2. Amendment of section heading, section and Note filed 7–13–95; operative 8–12–95 (Register 95, No. 28).
- 3. Editorial correction of subsection (a) (Register 95, No. 44).

### § 7297.7. Retaliation.

In addition to the retaliation prohibited by Government Code section 12940, subdivision (f), and section 7287.8 of the regulations, it shall be an unlawful employment practice for any person to discharge, fine, suspend, expel, punish, refuse to hire, or otherwise discriminate against any individual, except as otherwise permitted in this subchapter, because that individual has:

- (a) exercised his or her right to CFRA leave, and/or
- (b) given information or testimony regarding his or her CFRA leave, or another person's CFRA leave, in any inquiry or proceeding related to any right guaranteed under this subchapter.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Sections 12940, subd. (f) and 12945.2, Government Code.

### HISTORY

1. New section filed 2-9-93; operative 3-11-93 (Register 93, No. 7).

2. Amendment filed 7–13–95; operative 8–12–95 (Register 95, No. 28).

### § 7297.8. Remedies.

Upon determining that an employer has violated Government Code section 12945.2, the Commission may order any remedy available under Government Code section 12970, and section 7286.9 of the regulations. The remedy, however, for a violation of section 7297.9 (failure to provide notice) shall be an order that the employer provide such notice. Note: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Sections 12945.2 and 12970, Government Code.

#### HISTORY

1. New section filed 2-9-93; operative 3-11-93 (Register 93, No. 7).

### § 7297.9. Notice of Right to Request CFRA Leave.

(a) Employers to Post Notice.

Covered employers shall provide notice to their employees of the right to request CFRA leave under the California Family Rights Act. Employers shall post the notice in a conspicuous place or places where employees tend to congregate. If the employer publishes an employee handbook which describes other kinds of personal or disability leaves available to its employees, that employer shall include a description of CFRA leave in the next edition of its handbook which it publishes following adoption of these regulations. The employer may include both pregnancy disability leave and CFRA leave requirements in a single notice.

(b) Employers to Give Notice.

Employers are also encouraged to give a copy of the notice to each current and new employee, ensure that copies are otherwise available to each current and new employee, and disseminate the notice in any other way.

(c) Non-English Speaking Workforce.

Any employer whose workforce at any facility or establishment contains ten percent or more of persons who speak a language other than English as their primary language shall translate the notice into the language or languages spoken by this group or these groups of employees.

(d) Text of Notice.

The text below contains only the minimum requirements of the California Family Rights Act of 1993 and of the employer's obligation to provide pregnancy disability leave. Nothing in this notice requirement prohibits an employer from providing a leave policy which is more generous than that required by this act and providing its own notice of its own policy. Covered employers may develop their own notice or they may choose to use the text provided below, unless it does not accurately reflect their own policy.

### FAMILY CARE AND MEDICAL LEAVE (CFRA LEAVE) AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, you may have a right to an unpaid family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent or spouse.

Even if you are not eligible for CFRA leave, if you are disabled by pregnancy, childbirth or related medical conditions, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA—eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the birth of your child. Both leaves contain a guarantee of reinstatement to the same or to a comparable position at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 days advance notice for fore-seeable events (such as the expected birth of a child or a planned medical treatment for yourself or of a family member). For events which are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy or your own serious health condition or certification from the health care provider of your child, parent or spouse who has a serious health condition before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption or foster care placement of a child, the basic minimum duration of the leave is two weeks and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact \_\_\_\_\_\_.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Sections 12940, subd. (i), 12945, subd. (b)(2) and 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; and Code of Federal Regulations, tit. 29, part 825.

### HISTORY

- 1. New section filed 2-9-93; operative 3-11-93 (Register 93, No. 7).
- 2. Amendment of section heading, section and NOTE filed 7–13–95; operative 8–12–95 (Register 95, No. 28).

### § 7297.10. Relationship with FMLA Regulations.

To the extent that they are not inconsistent with this subchapter, other state law or the California Constitution, the Commission incorporates by

reference the federal regulations interpreting FMLA issued January 6, 1995 (29 CFR Part 825), which govern any FMLA leave which is also a leave under this subchapter.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Section 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq; and Code of Federal Regulations, tit. 29, part 825.

#### HISTORY

1. New section filed 7-13-95; operative 8-12-95 (Register 95, No. 28).

### § 7297.11. Certification Form.

For leaves involving serious health conditions, the employer may utilize the following "Certification of Health Care Provider" form or its equivalent. Employers may also utilize any other certification form, such as the United States Department of Labor Form WH–380, revised December 1994 ("Certification of Health Care Provider/Family and Medical Leave Act of 1993"), provided that the health care provider does not disclose the underlying diagnosis of the serious health condition involved without the consent of the patient.

NOTE: Authority cited: Sections 12935, subd. (a) and 12945.2, Government Code. Reference: Section 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. §§2601 et seq.; and Code of Federal Regulations, tit. 29, part 825. Appendix B, Form WH–380, as revised December 1994.

### HISTORY

- 1. New section and form filed 7-13-95; operative 8-12-95 (Register 95, No. 28).
- 2. Editorial correction of form (Register 95, No. 44).

### FAIR EMPLOYMENT & HOUSING COMMISSION CERTIFICATION OF HEALTH CARE PROVIDER (California Family Rights Act of 1993 (CFRA))

1.	Empl	oyee's N	Name:			
2.	Patient's Name (If other than employee):					
3.	Date medical condition or need for treatment commenced [NOTE: THE HEALTH CARE PROVIDER IS NOT TO DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT THE CONSENT OF THE PATIENT]:					
4.	Probable duration of medical condition or need for treatment:					
5.	The attached sheet describes what is meant by a "serious health condition" under both the federal Family and Medica Leave Act (FMLA) and the California Family Rights Act (CFRA). Does the patient's condition qualify under any of the categories described? If so, please check the appropriate category.					
	(1)	(2)	(3) (4) (5) (6)			
6.	If the	certifica	ation is for the serious health condition of the employee, please answer the following:			
	Yes	No				
			Is employee able to perform work of any kind? (If "No", skip next question.)			
			Is employee unable to perform any one or more of the essential functions of employee's position? (An swer after reviewing statement from employer of essential functions of employee's position, or, i none provided, after discussing with employee.)			
7.	If the	certifica	ation is for the care of the employee's family member, please answer the following:			
	Yes	No				
			Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety o transportation?			
			After review of the employee's signed statement (See Item 10 below), does the condition warrant the participation of the employee? (This participation may include psychological comfort and/or arranging for third–party care for the family member.)			
8.	Estin	ate the p	period of time care needed or during which the employee's presence would be beneficial:			
9.	Pleas	e answer	the following question only if the employee is asking for intermittent leave or a reduced work schedule			
	Yes	No				
			Is it medically necessary for the employee to be off work on an intermittent basis or to work less that the employee's normal work schedule in order to deal with the serious health condition of the employee or family member?			
			If the answer to 9. is yes, please indicate the estimated number of doctor's visits, and/or estimated dura tion of medical treatment, either by the health care practitioner or another provider of health services upon referral from the health care provider.			

ITEM 10 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE.

\*\*\*\*TO BE PROVIDED TO THE HEALTH CARE PROVIDER UNDER SEPARATE COVER.

10.	she will provide and an estimate of the time period during which this care will be provided, including a schedule it leave is to be taken intermittently or on a reduced work schedule:				
11.	Signature of health care provider:				
	Date:				
12.					
	Date:				

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

- 2. Absence Plus Treatment
  - (a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
    - (1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
    - (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- 3. Pregnancy [NOTE: An employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA.]

Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatment

A chronic condition which:

- (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- 5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

# Chapter 3. Discrimination In Housing (Reserved)

#### HISTORY

1. Editorial renumbering of Subchapter 3 of Chapter 3, Title 8 to Chapter 3 of Division 4, Title 2 (Register 81, No. 3).

### Chapter 4. Procedures of the Commission

### Subchapter 1. General Matters

### § 7400. Statement of Purpose.

These regulations interpret, implement, and supplement the procedures set forth in Articles 1 (employment, Unruh Act and Ralph Act, discrimination) (Gov. Code, §12960 et seq.) and 2 (housing discrimination) of the Fair Employment and Housing Act (FEHA) (Gov. Code, §12980 et seq.). These regulations and provisions of the FEHA shall govern the practice and procedure in all matters before the Fair Employment and Housing Commission (Commission). They incorporate the requirements of the Administrative Adjudication Bill of Rights, Government Code sections 11425.10 et seq., and incorporate by reference certain sections of the Administrative Procedure Act, Government Code sections 11370 et seq., as specified.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11370 et seq., 11425.10 et seq., 12948, 12960 et seq. and 12980 et seq., Government Code.

#### HISTORY

Repealer of former chapter 4 (subchapters 1–4, sections 7400–7467), repealer of former subchapter 1 (sections 7400–7405), new chapter 4 (sections 7400–7438) and repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history of chapter 4, see Register 83, No. 23.

### § 7401. Delegation of Powers.

Except where otherwise prohibited by law or by these regulations, the Commission may delegate any of the powers and duties of the Commission to the Chairperson, the Hearing Officers, or other members of the staff of the Commission. When a regulation requires something to be delivered or mailed to the "Commission," it may be delivered or mailed, unless otherwise specified, to the Executive and Legal Affairs Secretary (ELAS) or Hearing Officer if there is a Hearing Officer assigned to the case.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Section 12935(a), Government Code.

### HISTORY

Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 82, No. 52.

### § 7402. Definitions.

- (a) "Accusation" means the charging document issued by the Department pursuant to Government Code sections 12965 and 12981.
- (b) "Administrative adjudication" means any stage of any proceeding, including but not limited to, the hearing of the Commission following the issuance of an accusation by the Department of Fair Employment and Housing (Department) and enforcement of any judgment entered.
- (c) "Amicus brief" means a written submission to the Commission by a non-party who has an interest in the subject matter of a particular adjudicative proceeding.
- (d) "Chairperson" means the Chairman or Chairwoman of the Commission.
- (e) "Clerk of the Commission" means any individual assigned administrative responsibilities by the ELAS.
- (f) "Commission" means the Fair Employment and Housing Commission and includes any Commissioner, officer, employee, or other individual delegated any function, power, or duty of the Commission.

- (g) "Commissioner" means any member of the Fair Employment and Housing Commission, including the Chairperson.
- (h) "Complainant" means a person claiming to be aggrieved by a practice which is unlawful under the FEHA and who files a complaint with the Department, pursuant to Government Code section 12960 or 12980.
- (i) "Complaint" means a complaint filed with the Department, pursuant to Government Code section 12960 or 12980, by a person alleging a practice which is unlawful under the FEHA. It also means a complaint of housing discrimination filed by the California Attorney General, pursuant to Government Code section 12980, subdivision (b).
- (j) "Deliver" or "mail" includes, but is not limited to, sending something by facsimile (fax) or other means of electronic transmission, as allowed by the rules set forth in sections 7406 and 7407.
- (k) "Department" means the Department of Fair Employment and Housing and includes any officer, employee, or other individual delegated any function, power, or duty of the Department.
- (*l*) "Director" means the Director of the Department who is the executive officer of the Department and includes any officer, employee, or other individual delegated any function, power, or duty of the Director.
- (m) "ELAS" means the Executive and Legal Affairs Secretary and chief executive officer of the Commission and includes any officer, employee or other individual delegated any function, power, or duty of the FLAS
- (n) "Hearing" means the evidentiary hearing of the Commission held pursuant to the issuance of an accusation by the Department.
- (o) "Hearing Officer" means an administrative law judge of the Com-
- (p) "Motion in limine" means a written request to the Hearing Officer brought prior to the taking of evidence at hearing to exclude irrelevant or prejudicial matters at hearing.
- (q) "Party" includes the Department, the respondent(s), and any person who has been allowed by the Commission to intervene in the proceeding.
- (r) "Person" includes one or more individuals, limited liability companies, partnerships, associations, governmental entity, corporations, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries.
- (s) "Respondent" means any person who is alleged to have committed an unlawful practice in a complaint filed with the Department pursuant to Government Code section 12960 or 12980 and/or a person against whom an accusation is filed pursuant to Government Code section 12965 or 12981.
- (t) "Section 12948 discrimination" means allegations of a denial of public accommodation rights or a denial of rights because of hate violence pursuant to Civil Code section 51, 51.7, 54, 54.1, or 54.2, as incorporated in Government Code section 12948.
- (u) "Vice chairperson" is a person elected by the Commission as a whole to assume the duties of the chair when the chairperson is absent. Whenever the word "chairperson" appears in these regulations, it shall include "vice chairperson."

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 51,51.7,54,54.1 and 54.2, Civil Code; and Sections 12965, 12981, 12960, 12980, 12925(d) and 12948, Government Code.

### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 82, No. 52.

# § 7403. Department to Maintain Current Addresses and Telephone Numbers of Complainants and Respondents.

All complainants and respondents shall keep the Department advised of their current telephone number and mailing address.

(a) Complainants shall file with the Department their telephone numbers, mailing addresses and addresses at which they can be personally served with documents at the time they sign the complaint and shall notify the Department of any changes of addresses and telephone numbers dur-

ing the investigation and administrative adjudication of the complaint and until payment of any judgment is complete.

(b) When serving the complaint on respondents, the Department shall notify respondents in writing that a complaint has been filed against them, that they are required to file their telephone numbers and mailing addresses and addresses at which they can be personally served documents with the Department, and that they must notify the Department of any changes of addresses or telephone number during the investigation and administrative adjudication of the complaint and until payment of any judgment is complete.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12960, 12962, 12980 and 12986, Government Code.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

# § 7403.5. Interpretive Guidelines.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12935(i), Government Code.

#### HISTORY

- 1. New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7404. Public Hearing Records.

The official record of the Commission in every case which is to proceed to hearing shall be available for public inspection upon making appropriate arrangements with the Clerk of the Commission.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 6253(a) and 12935(a), Government Code.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 82, No. 52.

## § 7405. Representation in Matters Before the Commission.

- (a) At all stages of the investigation and administrative adjudication, a respondent may represent himself or herself, may have representation by legal counsel, or may have non-legal representation.
- (b) When a party is unrepresented or chooses representation other than by legal counsel, the Commission shall make reasonable efforts to ensure that the rights of the party are protected. Where not otherwise prohibited by law, these efforts may include interpreting papers as motions before hearings or requests for discovery, granting extensions of time to file papers, and waiving procedural requirements when in the interests of justice.
- (c) Nothing in this section shall be interpreted to permit a party to engage in dilatory or delaying tactics, such as choosing not to respond to an accusation, or delaying choice of representation.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12935(a), 12967 and 12981(c), Government Code.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 82, No. 52.

### § 7406. Filing of Papers with the Commission.

- (a) To file a document with the Commission, a party shall submit two copies of the document to the Clerk of the Commission at its office in San Francisco, California.
- (b) Filing of a document is effective if the document is mailed to the Commission by first class, overnight or express mail, registered, or certified mail, postmarked no later than the last day of the time limit. Where mail is metered and bears a later postmark, the date of the postmark shall control for timeliness purposes.

(c) Filing of a document is also effective if it is delivered or sent by facsimile transmission (fax) or other electronic delivery, such as electronic mail (e-mail), when approved by the Commission, on or before the last day of the time limit. If a document is filed by facsimile or other approved electronic means of delivery, the sender shall also place two hard copies of the document in the mail to the Commission, postmarked no later than the last day of the time limit. The copy of any document filed by facsimile or other approved electronic means of delivery shall bear a notation of the date and place of transmission and the facsimile telephone number or e-mail address, where appropriate, to which it is being transmitted.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Section 1013(f), Code of Civil Procedure; and Sections 12935(a) and 12972(a)(2), Government Code.

#### HISTORY

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7407. Service of Parties and Complainants.

Whenever a party files any papers with the Commission, the party shall serve copies of the same on all other parties and on the complainant, or on their attorneys or representatives of record. Service may be by first class mail, registered or certified mail, overnight or express mail, or any other form of mail delivery. Service may also be by facsimile transmission or other approved electronic means of delivery. If a document is served by facsimile or other approved electronic means of delivery, the person serving the document shall also place a hard copy in the mail within any applicable time limit. Service may also be by personal service.

(a) Proof of Service. Service shall be made simultaneously with filing and proof of such service, by means of a written declaration under penalty of perjury, shall be attached to the papers. Any proof of service which meets the requirements of Code of Civil Procedure section 1013a is acceptable. A sample proof of service, which assumes service by facsimile, followed by placing a hard copy of the document in the mail, is the following:

Declaration of Service by [insert means of service]

I, the undersigned, hereby declare:

I am over eighteen years of age and not a party to the within cause. My address is [insert address]. On [insert date], I served a copy of the [list all documents by title or description] on each of the following, by [insert means of service], facsimile transmission and by placing the same in an envelope (or envelopes) addressed respectively as follows:

[insert names and addresses of all persons served with the documents and, if applicable, which party each person represents]

Each said envelope was then on said date sealed and deposited in the United States mail at [insert location], the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on [insert date] at [insert location].

[Signed by the person executing the service]

- (b) Date of Service. The date of service of papers served on parties and on complainants, and papers served by the Commission, shall be when the paper is deposited in the United States mail, including overnight mail, delivered in person, or sent by facsimile transmission or other approved means of electronic delivery (assuming that a hard copy was also sent by mail, as required by this section). Where mail is metered and bears a later postmark, the date of the postmark shall control for timeliness purposes.
  - (c) Computation of Time Periods.
- (1) Beginning and end of time period. In computing time periods prescribed by these rules, the day of the event which starts the time period running is not counted, but the last day of the period is included. If the last day of the period falls on a Saturday, Sunday, or a state legal holiday, the time period expires at the corresponding time on the next business day.

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- (2) Extension for service by mail. Whenever a time period is triggered by service of papers on a party or on a complainant and such service is made by regular mail, five days shall be added to the prescribed period for response. When service is made by overnight or other express mail, or by facsimile transmission, two state business days shall be added to the prescribed period for response. No days will be added to any time period when an extension of time has been granted.
- (d) The rules contained in this regulation shall also govern all notices, Commission decisions, and other papers sent out by the Commission pertaining to administrative adjudication.
- (e) Service and orders adverse to respondents. If the respondent has not filed a Notice of Defense or appeared at the hearing, the Commission may issue an order adversely affecting the respondent only if the Department proves that it has served the respondent with the accusation, accusation package, and Notice of Hearing, either personally or by registered or certified mail addressed to the last known mailing address on file with the Department, as required by section 7403(b).

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 1012.5, 1013 and 1013a, Code of Civil Procedure; Sections 11505(c), 12935(a) and 12972(a)(2), Government Code; and Evans v. Department of Motor Vehicles (1994) 21 Cal. App. 4th 958.

#### HISTORY

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7408. Accusations.

- (a) Only the Director or individual within the Department delegated such authority may, in his or her discretion, issue an accusation.
- (b) An accusation shall be deemed issued on the date it is filed with the Commission. An accusation shall be filed with the Commission in the manner set forth in section 7406.
- (c) All accusations issued pursuant to Government Code section 12965, subdivision (a), alleging employment or Section 12948 discrimination, shall be issued by the Department and filed with the Commission on or before the one—year anniversary date of the filing of the complaint.
- (d) All accusations issued pursuant to Government Code section 12981, subdivision (a), alleging unlawful housing practices, shall be issued by the Department and filed with the Commission on or before the 100th day after the date of the filing of the complaint, unless impracticable for the Department to do so. If the Department determines that it is impracticable to meet this deadline, it shall file in the Pleading File a copy of the notification provided to the complainant and respondent explaining the Department's reason(s) for the delay.
- (e) Contents of accusation. The form and contents of an accusation may be determined by the Department but, at a minimum, shall meet all of the following:
  - (1) be written;
  - (2) be in the name of the Department;
- (3) contain the name of each respondent and, if applicable, the capacity in which each respondent is being named;
- (4) set forth the nature of the charges in ordinary and concise language with appropriate references to specific sections of the FEHA or other applicable statutes and regulations sufficient to allow the respondent(s) to prepare a defense; and
  - (5) set forth the relief sought by the Department.
  - (f) Accusations need not be verified.
- (g) The Commission may ignore or correct any error or defect in the accusation which does not substantially affect the rights of any party.
- (h) Contents of accusation package. Upon the filing of an accusation, the Department shall serve on the respondent and the complainant, in accordance with the rules in section 7406, an "accusation package." The accusation package shall include, but is not limited to, the following documents:
  - (1) a copy of the accusation;
- (2) a copy of the underlying complaint(s) which is the subject of the accusation;

- (3) a copy of the Commission's procedural regulations accompanied by a statement that these regulations are the governing procedure for administrative adjudication before the Commission;
- (4) a copy of a subpoena and a subpoena duces tecum form with instructions for their use;
  - (5) a copy of the Statement to Respondents;
  - (6) a Notice of Defense form;
- (7) a notice of the right to request, as needed, an interpreter or reasonable accommodation;
- (8) if applicable under Government Code section 12965(c) for allegations of employment or Section 12948 discrimination, a statement regarding respondent's right to elect to transfer the proceedings to court in lieu of administrative adjudication, and a form notice to transfer proceedings to court;
- (9) for accusations issued pursuant to Government Code section 12981(a), regarding allegations of housing discrimination, a statement regarding respondent's, complainant's, or other aggrieved person's right to elect to have the claims adjudicated in a civil action in lieu of administrative adjudication, and a form notice to transfer proceedings to court;
- (10) if applicable under Government Code section 12981(g), for housing discrimination cases, a statement to the complainant that she or he may only be able to recover damages for emotional distress or other intangible injuries through a civil action;
- (11) a notice asking the respondent to consent to electronic, rather than stenographic, reporting of the proceedings at hearing;
- (12) a copy of the Department's notice informing respondents and complainants of their obligation to keep the Department informed of any change of mailing address or telephone number;
  - (13) a Notice of Hearing or Notice of Impending Hearing;
- (14) a proof of service specifying that all of the above documents have been served
- (i) Service of accusation and accompanying materials. The accusation and accusation package shall be served on each respondent in accordance with the rules in section 7407. The complainant will be provided with a copy of the accusation and related papers pertinent to complainant.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12965, 12948, 12980(f), 12981, 11425.10(a)(2) and 11503, Government Code.

#### **HISTORY**

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7409. Amended Accusations.

- (a) The Department may amend an accusation, issued pursuant to Government Code section 12965 regarding allegations of employment or Section 12948 discrimination, to pray either for damages for emotional injury or for administrative fines, or both, only within the first thirty days after the issuance of the original accusation.
- (b) The Department may amend an accusation with new charges (other than those in subdivision (a)) any time up to 30 calendar days prior to the original or continued date the hearing is scheduled to commence. After that time, the Department may amend an accusation which contains new charges only upon such terms as the Hearing Officer approves, including, but not limited to, granting a continuance to the respondent. "New charges" include any amendment which may affect the liability of respondents, such as, but not limited to, the addition of a new respondent or the naming of an existing respondent in a new capacity; the charging of a violation of new sections of the FEHA; the pleading of substantive new facts; and the prayer for new or significantly modified relief.
- (c) Any new charges shall be deemed controverted and the respondent does not need to file a new Notice of Defense. Any objections to the amended accusation may be made orally and shall be noted on the record.
- (d) At any time before the matter is submitted to the Hearing Officer for decision, the Department may amend an accusation to make nonsubstantive changes.
- (e) The first amended accusation shall be clearly labeled "First Amended Accusation," and any subsequent amended accusations shall

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be labeled consecutively. The Department shall clearly identify the changes made to each amended accusation either by highlighting the changes or identifying them in a separate written statement.

(f) Any amended accusations shall be filed with the Commission and served on all parties and the complainant in accordance with sections 7406 and 7407.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11507, 12965(c)(4), 12935(a) and 12972(a)(2), Government Code.

#### HISTORY

 New section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7410. Election to Transfer Proceedings to Court in Lieu of Administrative Adjudication.

- (a) Accusations Issued Pursuant to Government Code Section 12965(a) Regarding Allegations of Employment or Section 12948 Discrimination. If the accusation (or amended accusation if the purpose of the amendment is to add a prayer for damages for emotional injuries and/ or administrative fines) includes a prayer for damages for emotional injury or for administrative fines, or both, any respondent may elect to transfer the proceedings to a court instead of having the matter heard by the Commission. In order to do this, the respondent must serve written notice to this effect. The respondent may use the form provided for this purpose in the Statement to Respondents or available from the Department, or any comparable form. The respondent must serve this notice on the Department, the Commission, and the complainant within 30 days after service of the accusation (or an accusation which has been amended to add a prayer for damages for emotional injuries and/or administrative fines) on the respondent. Where not all of the named respondents exercise election to transfer proceedings to court, the case may be bifurcated and proceed with administrative adjudication as to those non-electing respondents.
- (b) Accusations Issued Pursuant to Government Code Section 12981 Regarding Allegations of Housing Discrimination. Any respondent or complainant may elect to have the charges asserted in the accusation adjudicated in a civil action rather than before the Commission. In order to do this, the person seeking election must serve written notice to this effect. The person may use the form provided for this purpose in the Statement to Respondents or available from the Department, or any comparable form. The person must serve the notice on the Department, the Commission, and all other parties, and the complainant, within 20 days after service of the accusation.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12948, 12965, 12965(c)(1) and 12989, Government Code. HISTORY

Repealer of former subchapter 2 (articles 1–6, sections 7410–7467), repealer of former article 1 (sections 7410–7413), and repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 82, No. 52.

# § 7411. Statement to Respondent.

The Statement to Respondent shall be substantially in the following form:

You may make a request for a hearing by delivering or mailing the enclosed form, called a Notice of Defense, to the Fair Employment and Housing Commission, [fill in address of the Commission] within 15 days after the accusation is served on you or you receive it by mail. You may also fax the Notice of Defense to the Commission at [fill in facsimile number], as long as you also place two hard copies of the Notice of Defense in the mail within the 15–day time limit. Either you or your representative must sign the Notice of Defense. If you do not file a Notice of Defense, the Department may proceed to hearing without you. You have a right to be represented by a lawyer or other person in these proceedings. The Department will always be represented by a lawyer. Whether or not you hire an attorney to represent you at the hearing, you may want to seek legal advice to better understand your rights and obligations.

The potential monetary damages that may be assessed by the Commission against you in an administrative adjudication may include, among

other things, actual damages, compensatory damages for emotional distress, and administrative fines or civil penalties. In an employment case brought pursuant to Government Code section 12965, the maximum monetary recovery per complainant for the emotional distress and administrative fines combined shall not exceed \$50,000 against each respondent. These damages are in addition to any actual damages, such as back pay, front pay, medical expenses and other out–of–pocket costs. In a housing case brought pursuant to Government Code section 12981, there is no upper limit on the emotional distress damages that may be awarded against you.

You are entitled to receive the names and addresses of Department witnesses and to inspect and copy the items mentioned in section 7417 which are held by the Department. You may contact: (here insert name and address of appropriate Department attorney) to obtain these items.

Once the hearing is set, it may be postponed only for good cause. If you have good cause, you must notify the Commission within 10 working days after you discover the good cause. Failure to give notice within 10 days may mean that the hearing will not be postponed.

You must at all times keep the Department notified of your current address, telephone number, and, if applicable, fax number.

[Add appropriate "election to transfer" language from section 7410, subdivision (a) or (b), and state that the appropriate "election to transfer" notice is included in the Statement to Respondent.]

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11505(b), 12935(a) and 12972(a)(2), Government Code.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

#### § 7412. Notice of Defense.

- (a) Within 15 days after service of the accusation, the respondent may file with the Commission a Notice of Defense, using the form provided by the Department in the accusation package or any substantially equivalent form. In the Notice of Defense, the respondent may request a hearing and state any objections the respondent may have to the form or substance of the accusation.
- (b) The Notice of Defense shall be in writing and signed by, or on behalf of, the respondent and shall state the respondent's mailing address, address at which the respondent can be personally served with documents, and telephone number. If the respondent is represented by an attorney or non-attorney representative, or is a corporation, the Notice of Defense shall state the name, mailing address and telephone number of respondent's representative. It need not be verified, or follow any particular form.
- (c) The respondent shall be entitled to a hearing on the merits if the respondent files a Notice of Defense.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11506, 12935(a) and 12972(a)(2), Government Code.

### History

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7413. Subpoenas.

- (a) Subpoenas and subpoenas duces tecum may be issued for attendance at the hearing and for production of documents at any reasonable time and place in advance of the hearing or at the hearing.
- (b) The Department and each party represented by legal counsel shall issue and sign its own subpoenas and subpoenas duces tecum, using the form in the Appendix to these regulations. Parties who are not represented by legal counsel may request the Commission to issue and sign subpoena and subpoena duces tecum forms.
- (c) The process extends to all parts of the state and shall be served in accordance with Code of Civil Procedure sections 1987 and 1988. A subpoena or subpoena duces tecum may also be delivered by certified mail, return receipt requested, or by personal service.
- (d) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

- (e) A person served with a subpoena or subpoena duces tecum may object to its terms by a motion which shall be resolved by the ELAS or a Hearing Officer in an appropriate order.
- (f) A witness appearing pursuant to a subpoena or subpoena duces tecum, other than a party, shall receive for the appearance the same mileage and fees allowed by law to a witness in a civil case (see Government Code sections 68092.5–68093), to be paid by the party at whose request the witness is subpoenaed. Fees for witnesses who are officers and employees of the state or political subdivision of the state shall be governed by Government Code sections 68096.1–68097.10).
- (g) Subpoenas and subpoenas duces tecum shall be served on the opposing party in the manner provided in section 7407 and shall comply with consumer notice requirements, Code of Civil Procedure sections 1985.3 and 1985.6, where applicable.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 1985.3, 1985.6, 1987, 1988, Code of Civil Procedure; Sections 11450.10, 11450.20(b), 11450.30, 11450.40, 68092.5–68093, 68096.1–68097.10, 12935(a) and 12972(a)(2), Government Code; and Sehlmeyer v. Department of General Services (1993) 17 Cal.App.4 1072.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

### § 7414. Setting of Hearing.

- (a) Requests for hearing. Where respondent has not stipulated in writing to waive the 90–day hearing requirement pursuant to regulation section 7429(c), the Department shall request the Commission to set the hearing within 90 days of issuance of the accusation. Where respondent has stipulated in writing to waive the 90–day hearing requirement, the Department shall make an effort to consult with the respondent and the complainant regarding hearing dates, and shall then request the Commission to set the hearing.
- (b) Notice of hearing. The Department shall deliver or mail a Notice of Hearing to all parties and the complainant at least 30 days prior to the date the hearing is scheduled to commence. If the hearing is continued, advance notice as short as 10 days may be given. The Notice of Hearing shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before the Fair Employment and Housing Commission at [place of hearing] on the [date and time of hearing] upon the charges made in the accusation served upon you. If you do not attend the hearing, the case will be decided without you and an order may be entered which directs you to pay money or take other action.

You have the right to be represented by a lawyer or other representative at your own expense.

You are not entitled to the appointment of a lawyer to represent you at public expense. The Department will be represented by a lawyer. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross—examine all witnesses testifying against you.

You are entitled to the issuance of subpoenas to compel the attendance of witnesses at the hearing and the production of books, documents or other things, either before the hearing at a reasonable time and place or at the hearing. If you are represented by a lawyer, your lawyer may use the subpoena forms attached to this Notice. If you are unrepresented or represented by someone other than a lawyer, you may obtain signed subpoena forms from the Fair Employment and Housing Commission at [here, insert the Commission's address and telephone number]. You are responsible for serving the subpoenaed person or entity with the subpoena, as well as serving a copy of the subpoena on the opposing party, in the manner set forth in section 7407. You must also comply with any consumer notice requirements (Code of Civil Procedure sections 1985.3 and 1985.6) where applicable.

If you or any of your witnesses will need language assistance, including sign language, or other accommodation, you must notify the Commission of this need as soon as possible, but no later than fifteen (15) days

before the hearing is to start. The Commission will secure the appropriate interpreter.

Attached is the Commission's regulation on Pre–Hearing Statements and a form for you to use. Please make sure that you comply with its requirements.

- (c) Requests for continuance of the hearing. A request for a continuance of a hearing date shall be made in writing, filed with the ELAS, and served on all of the parties and the complainant. Before making a request, the moving party shall contact all other parties to determine if there is any opposition and shall state whether there is any opposition in its papers to the ELAS.
  - (1) Requests for continuance will be granted only for good cause.
- (2) A continuance beyond the 90–day time limitation after issuance of an accusation provided by Government Code section 12968 will only be granted by written stipulation of the parties, written waiver of the time limit by all respondents, and upon approval of the ELAS. If approved, the order of the Commission shall specify new hearing dates or shall order the parties to set new dates.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 1985.3 and 1985.6, Code of Civil Procedure; Sections 11509, 11435.60, 12935(a) and 12972(a)(2), Government Code; and Sehlmeyer v. Department of General Services (1993) 17 Cal.App.4 1072.

#### **HISTORY**

 New section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7415. Withdrawal of Accusation.

- (a) Accusations issued pursuant to Government Code section 12965 regarding allegations of employment or section 12948 discrimination. The Department may at any time withdraw the accusation. If a complainant's right—to—sue notice has expired and that complainant objects to the withdrawal, however, the Commission shall decide whether to let the Department withdraw the accusation and whether to allow the administrative adjudication to proceed without the Department, and, if so, on what terms
- (b) Accusations issued pursuant to Government Code section 12981 regarding allegations of housing discrimination. The Department shall not withdraw the accusation unless the complainant withdraws the underlying complaint or the Department determines, after a thorough investigation, that, based on the facts, no reasonable cause exists to believe that an unlawful housing practice, as prohibited by the Act, has occurred or is about to occur or the Department determines that respondent has eliminated the violation which has occurred or is about to occur.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12948, 12965, 12981 and 12981.1, Government Code.

## HISTORY

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7416. Notification of Settlement or Withdrawal of Accusation.

The Department shall promptly notify the Clerk of the Commission of all settlements and withdrawals of accusations or any other action terminating a matter before the Commission. When properly notified, the Commission will vacate any hearing date and close its file on the matter on receipt of the withdrawal of the accusation.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12935(a) and 12972(a)(2), Government Code.

#### HISTORY

 New section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7417. Discovery.

(a) Once an accusation is issued, a party is entitled to discovery. The party may make a written request to another party prior to the hearing and within 30 days after service by the Department of the initial accusation or within 15 days after service of an amended accusation or additional pleading. Unless otherwise agreed to by the parties, all responses to written requests for discovery are due 30 days after the request has been made. The following discovery is allowable:

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- (1) obtain the names and addresses of witnesses who have knowledge of the matters raised in the accusation, to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and
- (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party or the complainant:
- (A) A statement pertinent to the subject matter of the accusation, made by the complainant or any party or any person employed by or related to a party.
- (B) Statements of witnesses proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (A) above;
- (C) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party proposes to offer in evidence:
- (D) Any writing or thing which is relevant and which would be admissible in evidence and which is in the possession or control of a party or the complainant;
- (E) Investigative or progress reports made by or on behalf of the Department or other party pertaining to the subject matter of the proceeding, to the extent that these reports 1. contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or 2. reflect matters perceived by the Department in the course of its investigation, or 3. contain or include by attachment any statement or writing described in (A) to (E), inclusive, or summary thereof.
- (3) For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.
- (4) Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.
- (5) If the Department alleges conduct which constitutes sexual harassment, sexual assault, or sexual battery, the following rule shall apply: Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at hearing to attack the credibility of the complainant as provided for in section 7429(f)(7).
- (b) In addition to the above, the Department and each respondent or other party may each take a single deposition, which shall continue day to day until completed. If an accusation charges multiple respondents, the Department may take a single deposition per respondent. A notice of deposition may also include a notice for production at the deposition of papers, books, accounts and documents. Unless agreed to otherwise by the parties or upon approval of the ELAS or Hearing Officer assigned to the case, depositions shall be scheduled for a date at least ten days after service of the deposition notice and shall be completed on or before the 30th day before the date initially set for hearing or the date of any continued hearing. However, the 30–day cut–off shall not apply where respondent has not stipulated in writing to waive the 90–day hearing requirement pursuant to regulation section 7429(c). In those cases, the deposition shall be completed on or before the 10th day before the hearing date.

Depositions are to be taken in the manner prescribed by Code of Civil Procedure section 2025, except that any application for a protective order, an order to stay the taking of the deposition and quash the deposition notice, or an order to compel the taking of the deposition shall be made to the Commission rather than to the courts. The rules and time limits for enforcement of discovery set forth below in subdivision (c) shall apply to depositions as well.

- (c) Procedures for enforcement
- (1) Any party claiming that its discovery, including subpoenas and subpoenas duces tecum, has not been complied with (the Moving Party) may serve on the Opposing Party and file with the ELAS, or Hearing Of-

- ficer, if one has been assigned to hear the discovery matter, a motion to compel discovery, against the party refusing or failing to comply with this section (the Opposing Party). The motion shall state facts showing that the Opposing Party failed or refused to comply with this section, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under this section, that a reasonable and good faith attempt to reach an informal resolution of the issue with the Opposing Party has been made, and the ground or grounds of the Opposing Party's refusal so far as known to the Moving Party.
- (2) The Moving Party shall serve the motion upon the Opposing Party and file the motion with the Commission within thirty (30) days after the Opposing Party has failed or refused to respond to the written request for discovery or to testify pursuant to a deposition notice. The Opposing Party shall have seven (7) days from the date of service of the motion to file and serve a response. The ELAS or assigned Hearing Officer, in his or her discretion, may allow a greater or lesser time in which to file a motion or response.
- (3) A party's "failure or refusal to respond" to discovery includes when that party has stated or indicated that it will not provide any response to the discovery or where, on the Moving Party's notification to the party that the response provided is incomplete or inadequate, that the party will not supplement the response, or where the Moving Party has advised that party in writing that its lack of meaningful, good faith response shall be considered a failure or refusal to respond for the purposes of section 7417(c)(2).
- (4) The ELAS or assigned Hearing Officer has the discretion to decide the matter without hearing. If the ELAS or Hearing Officer decides that a hearing is necessary, s/he has the discretion to conduct it by telephone or with the parties present.
- (5) Where the matter sought to be discovered is under the custody or control of the Opposing Party and the Opposing Party asserts that the matter is not a discoverable matter under the provisions of this section, or is privileged against disclosure under these provisions, the ELAS or Hearing Officer may order matters provided in subdivision (b) of section 915 of the Evidence Code to be lodged with the Commission and may examine the matters in accordance with its provisions.
- (6) Unless otherwise stipulated by the parties, the ELAS or Hearing Officer shall, no later than 15 days after the hearing (or, if no hearing has been held, within 15 days after receipt of the moving papers), make an order denying or granting the motion. The order shall be in writing setting forth the matters which the Moving Party is entitled to discover under this section. The ELAS or Hearing Officer shall serve by mail upon the parties a copy of the order. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the Moving Party, the order shall be effective on the date it is served.
- (7) Unless the ELAS or Hearing Officer rules otherwise, any discovery enforcement proceedings shall stay the 90–day requirement under Government Code section 12968 for the commencement of the hearing. NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Section 2025, Code of Civil Procedure; Sections 11440.40, 12968, 12972, 11507.6 and 11507.7, Government Code; and Section 915, Evidence Code.

#### **HISTORY**

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7418. Interpreters and Accommodation.

- (a) In proceedings where a party, a party's representative, or a party's expected witness requires an interpreter for any language, including sign language, that party shall be responsible for notifying the Commission, following the pre-hearing motion procedure in section 7419. The Commission shall be responsible for securing the interpreter and shall assess the costs of the interpreter as an ordinary cost of the hearing.
- (b) In proceedings where a party, a party's representative, or a party's expected witness has a disability requiring accommodation either at the

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hearing or at any other stage of the administrative adjudication, that party shall be responsible for complying with Judicial Rule 989.3 and/or Evidence Code section 754, set forth in the Appendix to these regulations. NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Section 754, Evidence Code; Judicial Rule 989.3; and Sections 11425.10(a)(9) and 11435.05–11435.65, Government Code.

#### HISTORY

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7419. Pre-Hearing Motions.

Pre-hearing motions before the Commission shall not decide substantive matters. Substantive matters, including jurisdictional or legal challenges, are to be presented at the hearing on the merits and, except as expressly provided below, shall not be the subject of proceedings before hearing.

- (a) If all parties stipulate in writing that there is a jurisdictional or other threshold dispositive issue which should, in the interests of judicial economy, be decided before proceeding to the merits of the case, the Hearing Officer assigned to hear the case may take evidence solely on the jurisdictional or other threshold issue and issue a written ruling on this issue alone. If the Hearing Officer rules for the Department, the parties shall set the case for the hearing on the merits. If the Hearing Officer rules against the Department, the procedure in section 7434 shall be followed and the issue will be placed before the Commission for decision in the matter. If the Commission decides for the Department, the case will then be remanded to the Hearing Officer for a hearing on the merits.
  - (b) Allowable pre-hearing (non-discovery) motions.
  - (1) Intervention.
  - (2) Amicus briefs.
  - (3) Motion compelling deposition of an unavailable witness.
  - (4) Consolidation or severance of matters for hearing.
- (5) Request for Interpreter, in compliance with the rules set forth in section 7418 and Government Code sections 11435.05 through 11435.65.
- (6) Motion for disqualification of the hearing officer, in compliance with the rules set forth in Government Code section 11425.40, subdivisions (a) through (c).
  - (7) Motion to Amend Accusation.
  - (8) Motion to Withdraw Accusation.
  - (9) Motion to Change Venue.
  - (10) Other motions, on prior approval of the ELAS.
  - (c) Pre-hearing motions: procedure.
- (1) Pre-hearing motions shall be filed with the ELAS, or assigned Hearing Officer, be in writing, and include a proof of service indicating service on all parties and the complainant.
  - (2) No special form of motion is required.
- (3) Unless these regulations set forth a different time for filing a particular motion (see, e.g., section 7409 for Amended Accusation; section 7415 for Withdrawal of Accusation; and section 7429(c), for Motion to Change Venue), pre-hearing motions shall be filed and served at least 15 calendar days before the date set for commencement of the hearing. Such motions may be heard on shorter notice on written application to, and approval of, the ELAS, for good cause, on such terms as determined by the ELAS. The non-moving party shall have seven (7) days from the date of service of the motion to file and serve a response. The ELAS, or Hearing Officer assigned to hear the case, in his or her discretion, may allow a lesser or greater time in which to file a motion or response.
- (4) An order granting or denying a motion shall be made by the ELAS or Hearing Officer assigned to hear the case. The order shall be in writing and served by mail on all parties of record.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. References: Sections 11425.10(a)(5),(9), 11435.05–11435.65 and 11425.40, Government Code; Section 754, Evidence Code; and Judicial Rule 989.3.

#### HISTORY

 New section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7420. Ex Parte Communications.

Except as otherwise allowed under the Administrative Procedure Act. Government Code sections 11430.10–11430.80, or as authorized by Judicial Rule 989.3 or under these regulations, there shall be no communication, direct or indirect, regarding any issue in a pending proceeding, to the Hearing Officer, ELAS, or Commission from an employee or representative of the Department or from an interested person outside of the Department, or from the respondent or complainant, without notice and opportunity for all parties to participate in the communication.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11430.10–11430.80, Government Code.

#### HISTORY

1. Repealer of former article 2 (sections 7420–7425) and repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7421. Consolidation and Severance.

- (a) A Hearing Officer, on his or her own motion, may order consolidation of two or more cases or severance of any consolidated cases or of issues in a single case. The Hearing Officer shall provide notice to all parties and allow a reasonable time for the parties to file and serve any objections in writing. Failure to assert objections within the time allowed shall constitute a waiver of objection to the order of consolidation or severance
- (b) A party who brings a motion for consolidation or severance shall comply with section 7419.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11507.3, 12935(a) and 12972(a)(2). Government Code.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7422. Pre-Hearing Statements.

- (a) Prior to hearing, the parties shall make best efforts to confer in person or by telephone to resolve or define any issues relating to the hearing. Thereafter, each party shall prepare a pre-hearing statement.
- (b) No later than five (5) state business days prior to the scheduled date of hearing, each party shall file with the Commission a pre-hearing statement signed by the party or his/her representative of record. This statement shall include, if relevant, but need not be limited to, the following:
  - (1) A brief summary of any stipulated facts.
- (2) Identification of all operative pleadings by their title and date signed.
- (3) A current estimate from each party of the time necessary to try its case.
- (4) The name of each witness each party may call at hearing, along with a brief statement of the content of each witness's expected testimony.
- (5) The name and address of each expert witness each party intends to call at hearing, along with a brief statement of the opinion each expert is expected to give and a copy of the current resume or curriculum vitae of each expert witness.
- (6) A list of documentary exhibits each party intends to present at hearing and a description of any physical or demonstrative evidence.
- (7) The identity of any witness whose testimony will be presented by affidavit pursuant to section 7428 or by deposition pursuant to section 7427.
  - (8) A concise statement of any significant evidentiary issues.
- (9) A copy of any pre-hearing motion filed by either party, any response filed thereto, and, if applicable, any order from the ELAS or Hearing Officer.
  - (10) Any anticipated motions in limine.
- (c) The pre-hearing statement may be prepared in the format provided in the Appendix to these regulations.
- (d) Failure to disclose fully all required items in the pre-hearing statement without good cause will, at the discretion of the Hearing Officer, result in the exclusion or restriction of evidence at hearing.
- (e) The parties are not required to disclose any witnesses or exhibits which may be presented for rebuttal or impeachment purposes.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11511, 11514, 12935(a) and 12972(a)(2), Government Code.

1. Repealer and new section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

## § 7423. Pre-Hearing Conferences.

- (a) The Hearing Officer assigned to hear the case may order a prehearing conference, which ordinarily will be held by telephone, unless the Hearing Officer determines otherwise.
- (b) The pre-hearing statements and any pre-hearing motions and responsive papers shall provide the basis for discussion of issues and rulings at the pre-hearing conference.
- (c) At or after the pre-hearing conference, the Hearing Officer may issue a prehearing order, or dictate into the record, the matters determined
- (d) Pre-hearing conferences need not be open to public observation. NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11425.20(c), 11511.5, 12935(a), 12972(a)(2), Government

#### HISTORY

1. Repealer and new section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7424. Settlement Conferences.

- (a) At any time after the Department issues an accusation, any party may file with the ELAS and serve upon all parties and the complainant a request for a settlement conference. Nothing in these regulations precludes the parties from discussing settlement whether or not a settlement conference is convened.
- (b) Upon receipt of a request for a settlement conference, the ELAS shall ascertain if the other party agrees and shall assess whether a settlement conference is feasible, and, if so, shall assign a settlement conference Hearing Officer to convene a settlement conference. The conference may be conducted by telephone or with the parties and complainant present, within the discretion of the settlement conference Hearing Offi-
- (c) The discussions at the settlement conference shall remain confidential and shall not be disclosed to the Hearing Officer assigned to hear the case. All settlement materials received by the settlement conference Hearing Officer shall be maintained in a separate settlement file. If efforts at settlement are unsuccessful or if the matter goes to hearing, a different Hearing Officer, who shall have no access to the settlement file, shall be assigned to hear the case.
- (d) No evidence of an offer of compromise or settlement made in settlement negotiations shall be admissible in any administrative adjudication before the Commission, whether as affirmative evidence, by way of impeachment, or for any other purpose.
- (e) The respondent and his/her representative, the Department's representative, and any other party to the action shall attend the settlement conference, or otherwise be available. Each party shall send, or have available, someone who has the authority to discuss and give tentative approval of a settlement. The complainant may be present, but in all events shall be available by telephone for consultation during the confer-
- (f) If a settlement is reached at, or as a result of, a settlement conference, the terms of the settlement shall be set forth in a written stipulation, settlement agreement or consent order, or orally placed on the record.
- (g) Settlement conferences are not open to public observation. NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11425.20(c), 11511.7, 11415.60(a), 12963.7 and 12932(d), Government Code.

#### HISTORY

1. Repealer and new section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7425. Intervention.

- (a) The complainant may intervene as a matter of right in any administrative adjudication before the Commission. In order to intervene, the complainant shall notify the Commission and the parties in writing of his/ her intent to intervene.
- (b) Any other person who wishes to intervene in the administrative adjudication of a case which is before the Commission shall file a motion so requesting with the Commission in accordance with section 7419(b). NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12935(a) and 12972(a)(2), Government Code.

#### HISTORY

1. Repealer and new section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7426. Amicus Briefs.

Before the hearing has commenced, any person wishing to file an amicus curiae brief in a matter which is before the Commission shall file a motion so requesting with the Commission in accordance with section 7419(b). After the hearing has commenced, the Commission may, in its discretion, permit any person to file an amicus brief at any time before the Commission decides the case.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12935(a) and 12972(a)(2), Government Code.

#### HISTORY

1. New section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7427. Depositions of Unavailable Witnesses.

Where a witness will be unable to attend or cannot be compelled to attend the hearing, any party may move the Commission for an order that the witness be deposed in the manner prescribed by law for depositions in Code of Civil Procedure section 2025. The motion shall be governed by the procedure set forth for pre-hearing motions in section 7419(b). The motion shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable, as defined in Evidence Code section 240, or cannot be compelled to attend, and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the state and where the Commission has ordered the taking of the testimony by deposition, the Moving Party shall obtain an order of the court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Government Code section 11189. At the hearing, the deposition may be used in accordance with the rules in Code of Civil Procedure section 2025, subdivision (u). This section is in addition to the deposition authorized by section 7417(b).

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11511, 11189, 12935(a) and 12972(a)(2), Government Code; Section 2025, Code of Civil Procedure; and Section 740, Evidence Code.

#### HISTORY

1. New section filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7428. Evidence by Affidavit.

- (a) At any time 10 or more days prior to a hearing or a continued hearing, any party may serve on the opposing party a copy of any affidavit which he or she proposes to introduce into evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such receipt of the affidavit, serves on the proponent a request to cross-examine the affiant, the opposing party's right to crossexamine the affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine the affiant is not afforded after a timely request to do so is made as provided herein, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evi-
- (b) The notice referred to in subdivision (a) shall be substantially in the following form: The enclosed affidavit of [name of affiant] will be introduced as evidence at the hearing in [title of proceeding]. [Name of affiant]

**Page 354** Register 99, No. 12; 3-19-99 will not be called to testify orally and you will not be entitled to question [him/her] unless you notify [name of person offering the testimony or his/her attorney] at [address] that you wish to cross—examine this person. To be effective, your request must be mailed, sent by facsimile machine (faxed) or delivered to [name of person offering the testimony or his/her attorney] on or before [date which is at least seven days after the date of mailing or delivering the affidavit to the opposing party], together with a proof of service.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2). Government Code. Reference: Sections 11514, 12935(a) and 12972(a)(2), Government Code.

#### HISTORY

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7429. Hearings.

- (a) Every hearing in a contested case shall be presided over by a Hearing Officer appointed by the Commission. The Hearing Officer shall hear the case alone, unless a quorum of the Commission decides to hear the case along with the Hearing Officer. If the Commission itself decides to hear the case, the rules in the Administrative Procedure Act, Government Code sections 11512 and 11517(a), shall govern the proceeding.
- (b) The hearing shall be open to public observation, unless the Hearing Officer orders closure of a hearing for one of the reasons set forth in Government Code section 11425.20, subdivision (a) (1)–(3).
- (1) The Hearing Officer may exclude persons whose conduct impedes the orderly conduct of the hearing; restrict or regulate attendance because of the physical limitations of the hearing room; or take other action to promote due process or the orderly conduct of the hearing.
- (2) The Hearing Officer may grant a motion to exclude witnesses under Evidence Code section 777.
  - (c) Time and place of hearing.
- (1) The hearing shall commence within 90 days of the filing of the accusation unless the parties waive the 90–day hearing requirement contained in Government Code section 12968, or a continuance has been granted, subject to the rule in section 7414, subdivision (c).
- (2) The Department shall make arrangements for the place of hearing, unless otherwise ordered by the Commission. The hearing shall be held in the county in which the alleged violation of the Fair Employment and Housing Act occurred or where the respondent does business, unless the parties agree, or the Commission orders, that the hearing take place in some other place. A party may move for a change in the place in hearing by written motion to the Commission in compliance with regulation sections 7406, 7407 and 7419, no later than 10 days after service of the Notice of Hearing, because of economic hardship, convenience of witnesses, or other good cause.
- (3) The hearing shall ordinarily be conducted with the parties present before the Hearing Officer, unless the Hearing Officer, with the approval of the parties, permits the hearing to be conducted by telephone, television, or other electronic means.
- (4) The Department shall attempt to consult with the respondent or respondent's representative prior to sending out the Notice of Hearing, in order to select mutually agreeable dates of hearing.
  - (d) Conduct of hearings
- (1) The proceedings at the hearing shall be reported by a stenographic reporter. Upon the consent of all the parties, however, the proceedings may be reported electronically.
- (2) If the Hearing Officer determines to order a transcript, the Commission shall receive an original and one copy. The Commission retains the original and the copy goes to the Department. Respondents and complainants, if they desire a copy of the transcript, are responsible for ordering their own copy of the transcript.
  - (e) Motions during hearing
- (1) Motions during the hearing, including motions in limine, shall be directed to the Hearing Officer, and may be made orally on the record or in writing with copies served on all parties and the complainant. The Hearing Officer shall rule on all motions, except as provided below in 2.,

- orally on the record, unless s/he reserves ruling until after the close of the hearing, in which case the ruling shall be made a part of the proposed decision.
- (2) The Hearing Officer shall not entertain motions in the nature of motions for non–suit, dismissal, or for judgment, but must proceed with the taking of evidence until all of the testimony to be offered by all the parties has been received.
  - (f) Evidence rules
  - (1) Oral evidence shall be taken only on oath or affirmation.
- (2) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross–examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination; to impeach any witness, regardless of which party first called him or her to testify; and to rebut the evidence against him or her. Any party may call any other party during its case in chief, pursuant to Evidence Code section 776.
- (3) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.
- (4) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence. If an appropriate objection is made at hearing, hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- (5) The rules of privilege shall apply in administrative adjudications before the Commission to the extent that they are recognized under the Evidence Code.
- (6) The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time because of its collateral or cumulative nature, or create substantial danger of undue prejudice or of confusing the issues.
- (7) In any proceeding under subdivisions (a), (h) or (i) of Government Code section 12940, or section 12955, alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is subject to all of the following limitations:
- (A) The evidence is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under (C) below. This paragraph is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed by statute.
- (B) The evidence is not admissible at the hearing unless offered to attack the credibility of the complainant as provided for under (C) below. Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.
- (C) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.
- (8) At the beginning of the hearing, the Department shall introduce into the record, for jurisdictional purposes only, the Pleading File in the case. The Pleading File shall contain, at a minimum, the complaint(s) and accusations(s), any Notice(s) of Defense or other responsive papers filed by the respondent(s) and the proofs of service for each document. If applicable under Government Code section 12980(f), 12981(a), or 12981(c), the pleading file shall also contain a copy of any notifications provided to the complainant and respondent explaining the Department's reason(s) for failing to complete the investigation or issue the accusation within 100 days, or make a final administrative disposition of the complaint within one year.

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NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11440.30, 11440.40, 11512, 11513, 11517(a), 11425.20, 12940, 12955 and 12968, Government Code; and Sections 352, 776 and 777, Evidence Code.

#### HISTORY

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7430. Default Hearings.

- (a) At a default hearing, the Hearing Officer may take action based upon the respondent's express admission or upon other evidence introduced at the hearing by the Department. Affidavits or declarations under penalty of perjury may be used as evidence without notice to respondent as allowed by section 7428.
- (b) The Hearing Officer and/or Commission may issue an order adversely affecting the respondent in a default hearing if the Department has complied with the rules set forth in section 7407(e).

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11505(c), 11514 and 11520, Government Code.

#### HISTORY

1. Repealer of former article 3 (sections 7430–7439) and repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7431. Official Notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the Commission's special field, and of any fact which may be judicially noticed by the courts of this state, pursuant to Evidence Code sections 451 and 452. Parties present at the hearing shall be informed by the Hearing Officer or Commission of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. All parties shall be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or, if requested, oral presentation of authority to the Commission.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Section 11515, Government Code; and Sections 451–52, Evidence Code.

#### HISTORY

1. New section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7432. Post-Hearing Matters.

- (a) Post–hearing briefs. The parties shall be given the opportunity to file post–hearing briefs, as directed at the hearing. Copies shall be served on the parties and on the complainants as provided in section 7407.
- (b) Date of submission of matter for decision. The matter will be deemed submitted to the Hearing Officer for decision on the date the Hearing Officer receives the transcripts of the hearing, hears oral argument, or receives the last timely post-hearing brief, whichever event occurs last.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 12935(a) and 12972(a)(2), Government Code.

## HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7433. Proposed Decisions.

- (a) Form of decision.
- (1) The decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision.
- (2) If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination, to the extent that the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.
- (3) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The Hearing Officer's experience,

technical competence, and specialized knowledge may be used in evaluating evidence.

(b) Preparation of proposed decision. Within 60 days after the case is submitted, the Hearing Officer shall prepare and serve on the Commission, all parties and the complainant, or their representatives of record, a proposed decision in such a form that it may be adopted by the Commission as the Commission's decision in the case. Failure of the Hearing Officer to deliver a proposed decision within the time required does not prejudice the rights of the Commission in the case.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11425.10(a)(6), 11425.50 and 11517, Government Code. HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7434. Commission Decisions.

- (a) Adoption or modification of proposed decision. Upon receipt of a proposed decision, the Commission may do any of the following:
  - (1) Adopt the proposed decision in its entirety.
- (2) Reduce or otherwise mitigate the proposed remedy and adopt the balance of the proposed decision.
- (3) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the Commission under this paragraph is limited to clarifying changes or changes of a similar nature that do not affect the factual or legal basis of the proposed decision.
- (b) Non-adoption of proposed decision. If the proposed decision is not adopted as provided in subdivision (a), the Commission may decide the case upon the record, including the transcript, or may refer the case to the same Hearing Officer, if available, to take additional evidence. The parties shall be notified of their ability to order a transcript in the case. If the case is assigned to a Hearing Officer for the taking of additional evidence, he or she shall prepare a proposed decision as provided in section 7433, subdivision (a) upon the receipt of the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of the proposed decision shall be served on the Commission and all parties and complainant, as prescribed below in subdivision (e).
- (1) Before deciding any case on the record, the Commission shall give the parties the opportunity to present further written argument and/or, if the Commission so chooses, to present further oral argument before the Commission.
- (2) If the analysis of the further argument reveals the need for additional evidence, the Commission may order the taking of additional evidence, either by the Commission or by the Hearing Officer. Following receipt of the additional evidence, the Commission may require further written or oral argument before deeming the case submitted to it for decision. If additional oral evidence is taken by the Commission, no Commissioner may vote unless the member heard the additional oral evidence.
- (c) The proposed decision shall be deemed adopted by the Commission 100 days after service to the Commission by the Hearing Officer, unless within that time: (1) the Commission notifies the parties that the proposed decision is not adopted and commences proceedings to decide the case itself upon the record, or (2) the Commission refers the case to the Hearing Officer to take additional evidence.
  - (d) The decision of the Commission shall be a public record.
- (e) Copies of the Commission decision shall be served by the Commission by first class, certified or registered mail on all parties and the complainant or their representatives of record. Proof of service shall be as set forth in section 7407.
- (f) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the Commission for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.
- (1) The Commission may refer the application to the Hearing Officer who wrote the proposed decision or may delegate its authority under this section to one or more persons.

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- (2) The Commission may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the Commission does not dispose of it within 30 days after it is made.
- (3) Nothing in this section precludes the Commission on its own motion, or on motion of the Hearing Officer, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 30 days after issuance of the decision.
- (4) The Commission shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party and complainant on which a copy of the decision was previously served.
- (g) The decision shall become effective 30 days after it is mailed to the parties and the complainant, unless a reconsideration of the decision is ordered within that time, or the Commission orders that the decision shall become effective sooner, or a stay of execution is granted by the Commission.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11517, 11518.5 and 11519, Government Code.

#### History

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

## § 7435. Precedential Decisions.

- (a) The Commission may designate, as a precedential decision, any decision or part of any decision that contains a significant legal or policy determination of general application that is likely to recur. Once the Commission designates a decision or part of a decision as precedential, the Commission may rely on it or that part of it as precedent and the parties may cite to such decisions in their argument to the Commission and courts.
- (b) The Commission shall publish, on an annual basis, an index of significant legal and policy determinations made in its precedential decisions and shall publish annually the availability of this index in the California Regulatory Notice Register. The Commission shall also make the index and precedential decisions available for inspection in its office and shall make the index available to the public by subscription or other online means.

NOTE: Authority cited: Sections 12935(a) and (h), and 12972(a)(2), Government Code. Reference: Sections 11425.10(a)(7), 11425.60 and 12935(h), Government Code.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

### § 7436. Reconsideration.

- (a) The Commission may order a reconsideration of all or part of a Commission decision on its own motion or by petition of any party. A party may petition the Commission for reconsideration within 20 days of the date a decision is mailed to the party. The power to order reconsideration shall expire 30 days after the delivery or mailing of a Commission decision to all parties and the complainant or upon the termination of a stay of not to exceed 30 days which the Commission may grant for the purpose of filing a petition for reconsideration. If the Commission needs additional time to evaluate a timely petition for reconsideration, the Commission may grant a stay of the expiration for no more than 10 days, for the sole purpose of considering the petition.
- (b) The decision may be reconsidered by the Commission on all the pertinent parts of the record and such additional evidence and argument as the Commission permits, or the Commission may assign the case back to the Hearing Officer for the taking of additional evidence, pursuant to the rules set forth in section 7435, subdivision (b). If oral evidence is introduced before the Commission, no Commissioner may vote unless he or she heard the evidence.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Section 11521, Government Code.

#### **HISTORY**

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

#### § 7437. Judicial Review.

The Commission incorporates by reference the rules for judicial review which are found in the Administrative Procedure Act, Government Code section 11523, and, for housing discrimination cases, Government Code section 12987.1.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11523 and 12987.1, Government Code; and Section 1094.5, Code of Civil Procedure.

#### HISTORY

1. Repealer and new section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

#### § 7438. Appendices.

- A. Subpoena and subpoena duces tecum form.
- B. Judicial Council Rule 989.3 and Evidence Code section 754.
- C. Pre-hearing statement form.

NOTE: Authority cited: Sections 12935(a) and 12972(a)(2), Government Code. Reference: Sections 11450.10, 11435.05 and 11511.5(a)(9), Government Code; Section 754, Evidence Code; and Judicial Council Rule 989.3.

#### HISTORY

1. Repealer and new section (including appendices A–C) filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12). For prior history, see Register 83, No. 23.

	Appendix A
Attorney (Name and Address):	
Attorney for (Name):	
Telephone Number:	
In the Matter of the Accusation of the DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING v.  Respondent(s).	) ) ) Case No )  SUBPOENA ,) SUBPOENA DUCES TECUM ) ) ) ) )
TO (Name):	<del></del>
1. YOU ARE ORDERED TO APPEAR AS A WITNESS a special agreement with the person named in item 3:	in this action at the date, time and place shown in the box below UNLESS you make
a. Date: b. Address:	Time:
2. AND YOU ARE	
a.□ ordered to appear in person.	
or other qualified witness and the production of the o	rds described in the accompanying affidavit. The personal attendance of the custodian original records are required by this subpoena. The procedure authorized by subdivision the Evidence Code will not be deemed sufficient compliance with this subpoena.
c.□ You are not required to appear in person if you con	mply with Evidence Code sections 1560 and 1561.
	IE OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:
a. Name:	
b. Telephone Number:	
<ol> <li>Witness Fees: You are entitled to witness fees and mile scheduled appearance from the person named in item 3.</li> </ol>	eage actually traveled both ways, as provided by law, if you request them before your
DISOBEDIENCE OF THIS SU	JBPOENA MAY BE PUNISHED AS CONTEMPT.
Date Issued:	
(Type or Print Name)	(Signature of Person issuing Subpoena)
	(Title)

THE SUBPOENAING PARTY IS REQUIRED TO SERVE A COPY OF THIS SUBPOENA ON THE OPPOSING PARTY (DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING OR RESPONDENT), AS WELL AS ON THE WITNESS WHO IS BEING SUBPOENAED, AND MUST COMPLY WITH ANY APPLICABLE CONSUMER NOTICE REQUIREMENTS (Code of Civil Procedure §§ 1985.3 and 1985.6).

# Appendix B

# RULE 989.3 REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES

- (a) [Policy] It shall be the policy of the courts of this state to assure that qualified individuals with disabilities have equal and full access to the judicial system. Nothing in this rule shall be construed to impose limitations or to invalidate the remedies, rights, and procedures accorded to any qualified individuals with disabilities under state or federal law.
  - (b) [Definitions] The following definitions shall apply under this rule:
- (1) "Qualified individuals with disabilities" means persons covered by the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Civil Code section 51 et seq.; and other related state and federal laws; and includes individuals who have a physical or mental impairment that substantially limits one or more of the major life activities; have a record of such an impairment; or are regarded as having such an impairment.
- (2) "Applicant" means any lawyer, party, witness, juror, or any other individual with an interest in attending any proceeding before any court of this state.
- (3) "Accommodation(s)" may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to the qualified individuals with disabilities, auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers; and making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations. While not requiring that each existing facility be accessible, this standard, known as "program accessibility," must be provided by methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites.
- (4) The "rule" means this rule regarding requests for accommodations in state courts by qualified individuals with disabilities.
- (5) "Confidentiality" applies to the identity of the applicant in all oral or written communications, including all files and documents submitted by an applicant as part of the application process.
- (c) [Process] The following process for requesting accommodations is established:
- (1) Applications requesting accommodation(s) pursuant to this rule may be presented ex parte in writing, on a form approved by the Judicial Council and provided by the court, or orally as the court may allow. Applications should be made at the designated Office of the Clerk, or to the courtroom clerk or judicial assistant where the proceeding will take place, or to the judicial officer who will preside over the proceeding.
- (2) All applications for accommodations shall include a description of the accommodation sought, along with a statement of the impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.
- (3) Applications should be made as far in advance of the requested accommodations implementation date as possible, and in any event should be made no less than five court days prior to the requested implementation date. The court may, in its discretion, waive this requirement.
- (4) Upon request, the court shall place under seal the identity of the applicant as designated on the application form and all other identifying information provided to the court pursuant to the application.
- (d) [Permitted communication] An applicant may make ex parte communications with the court; such communications shall deal only with the accommodation(s) the applicant's disability requires and shall not deal in any manner with the subject matter or merits of the proceedings before the court.
- (e) [Grant of accommodation] A court shall grant an accommodation as follows:
- (1) In determining whether to grant an accommodation and what accommodation to grant, the court shall consider, but is not limited by, the

- provisions of the Americans with Disabilities Act of 1990 and related state and federal laws.
- (2) The court shall inform the applicant in writing of findings of fact and orders, as may be appropriate, that the request for accommodations is granted or denied, in whole or in part, and the nature of the accommodation(s) to be provided, if any.
- (f) [Denial of accommodation] An application may be denied only if the court finds that:
  - (1) The applicant has failed to satisfy the requirements of this rule; or
- (2) The requested accommodation(s) would create an undue financial or administrative burden on the court; or
- (3) The requested accommodation(s) would fundamentally alter the nature of the service, program, or activity.

#### (g) [Review procedure]

- (1) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by nonjudicial court personnel within 10 days of the date of the notice of denial or grant by submitting a request for review to the judicial officer who will preside over the proceeding or to the presiding judge if the matter has not been assigned.
- (2) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by a presiding judge or any other judicial officer of a court within 10 days of the date of the notice of denial or grant by filing a petition for extraordinary relief in a court of superior jurisdiction.
- (h) [Duration of accommodations] The accommodations by the court shall commence on the date indicated in the notice of accommodation and shall remain in effect for the period specified in the notice of accommodation. The court may grant accommodations for indefinite periods of time or for a particular matter or appearance.

  Adopted, eff. Jan. 1, 1996.

#### EVIDENCE CODE

# § 754. Deaf or Hearing Impaired Persons; Interpreters; . Qualifications; Guidelines; Compensation; Questioning; Use of Statements

- (a) As used in this section, "individual who is deaf or hearing impaired" means an individual with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include an individual who is hearing impaired provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.
- (b) In any civil or criminal action, including, but not limited to, any action involving a traffic or other infraction, any small claims court proceeding, any juvenile court proceeding, any family court proceeding or service, or any proceeding to determine the mental competency of a person, in any court—ordered or court—provided alternative dispute resolution, including mediation and arbitration, or any administrative hearing, where a party or witness is an individual who is deaf or hearing impaired and the individual who is deaf or hearing impaired is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or hearing impaired understands by a qualified interpreter appointed by the court or other appointing authority, or as agreed upon.
- (c) For purposes of this section, "appointing authority" means a court, department, board, commission, agency licensing or legislative body, or other body for proceedings requiring a qualified interpreter.
- (d) For the purposes of this section, "interpreter" includes, but is not limited to, an oral interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of the individual who is deaf or hearing impaired.
- (e) For purposes of this section, "intermediary interpreter" means an individual who is deaf or hearing impaired, or a hearing individual who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting

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as an intermediary between the individual who is deaf or hearing impaired and the qualified interpreter.

- (f) For purposes of this section, "qualified interpreter" means an interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired.
- (g) In the event that the appointed interpreter is not familiar with the use of particular signs by the individual who is deaf or hearing impaired or his or her particular variant of sign language, the court or other appointing authority shall, in consultation with the individual who is deaf or hearing impaired or his or her representative, appoint an intermediary interpreter.
- (h) Prior to July 1, 1992, the Judicial Council shall conduct a study to establish the guidelines pursuant to which it shall determine which testing organizations, agencies, or educational institutions will be approved to administer tests for certification of court interpreters for individuals who are deaf or hearing impaired. It is the intent of the Legislature that the study obtain the widest possible input from the public, including, but not limited to, educational institutions, the judiciary, linguists, members of the State Bar, court interpreters, members of professional interpreting organizations, and members of the deaf and hearing–impaired communities. After obtaining public comment and completing its study, the Judicial Council shall publish these guidelines. By January 1, 1997, the Judicial Council shall approve one or more entities to administer testing for court interpreters for individuals who are deaf or hearing impaired. Testing entities may include educational institutions, testing organizations, joint powers agencies, or public agencies.

Commencing July 1, 1997, court interpreters for individuals who are deaf or hearing impaired shall meet the qualifications specified in subdivision (f).

- (i) Persons appointed to serve as interpreters under this section shall be paid, in addition to actual travel costs, the prevailing rate paid to persons employed by the court to provide other interpreter services unless such service is considered to be a part of the person's regular duties as an employee of the state, county, or other political subdivision of the state. Payment of the interpreter's fee shall be a charge against the county, or other political subdivision of the state, in which that action is pending. Payment of the interpreter's fee in administrative proceedings shall be a charge against the appointing board or authority.
- (j) Whenever a peace officer or any other person having a law enforcement or prosecutorial function in any criminal or quasi–criminal investigation or proceeding questions or otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or hearing impairment, a good faith effort to secure the services of an interpreter shall be made, without any unnecessary delay unless either the individual who is deaf or hearing impaired affirmatively indicates that he or she does not need or cannot use an interpreter, or an interpreter is not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101–336) and federal regulations adopted thereunder.
- (k) No statement, written or oral, made by an individual who the court finds is deaf or hearing impaired in reply to a question of a peace officer, or any other person having a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation or proceeding, may be used against that individual who is deaf or hearing impaired unless the question was accurately interpreted and the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court makes special findings that either the individual could not have used an interpreter or an interpreter was not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101–336) and federal regulations adopted thereunder and that the statement was made knowingly, voluntarily, and intelligently.
- (l) In obtaining services of an interpreter for purposes of subdivision (j) or (k), priority shall be given to first obtaining a qualified interpreter.

- (m) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of subdivision (b) for use of a qualified interpreter for individuals who are deaf or hearing impaired participating as parties or witnesses in a trial or hearing.
- (n) In any action or proceeding in which an individual who is deaf or hearing impaired is a participant, the appointing authority shall not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the participating individual who is deaf or hearing impaired.
- (o) Each superior court shall maintain a current roster of qualified interpreters certified pursuant to subdivision (f). (Amended by Stats. 1995, c. 143 (A.B. 1833), §1. eff. July 18, 1995.)

### Appendix C

#### PRE-HEARING STATEMENT

You may, but do not have to, use this form to prepare your Pre–Hearing Statement which must be filed with the Commission no later than five working days before the scheduled date of hearing. Failure to fully disclose all required items in the Pre–Hearing Statement may result in the exclusion or restriction of evidence at the hearing. Please see the Commission's procedural regulations, at California Code of Regulations, Title 2, sections 7400 et seq., for more details.

In the Matter of the Accusation of the	)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING	) PRE-HEARING STATEMENT ) (Cal. Code Regs. §7422) )
v. (RESPONDENT'S NAME),	) Case No.: ) Hearing Date:
Respondent(s).	)
(COMPLAINANT'S NAME), Complainant(s).	) ) )

- 1. Brief summary of any stipulated facts:
- 2. Pleadings in the case:

Date of accusation:

Date(s) of any amended accusation(s):

Date of Notice of Defense:

Title and date of any other pleading filed in the case:

- 3. Estimated time necessary to try your case:
- 4. List of all witnesses as follows:

Name of witnesses/brief statement of anticipated testimony.

- 5. List of all expert witnesses as follows:
- Name of expert witness/brief statement of anticipated testimony.
- 6. Exhibits

Each exhibit shall be separately listed and shall include a description that is sufficient for identification.

7. Evidence by Affidavit or Deposition (must comply with California Code of Regulations, Title 2, §§7427 and 7428.)

Name of Witness	Reason that witness is unavailable		

8. Major evidentiary issues, if any, in the case:

- Attach copy of any pre-hearing motion, any response to the motion, and any order.
- 10. Attach any anticipated motions in limine.
- 11. Other issues or matters.

Date:		
Signature:		
Typed Name:	_	 
Attorney for:		

#### § 7439. Filing of Notice of Defense.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11506 and 12935(a), Government Code.

#### HISTORY

1. Renumbering of former Section 7439 to Section 7438 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

# § 7440. Purpose of Motions Before Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12935(a), 12965(a), 12967–12969 and 12981, Government Code.

#### HISTORY

1. Repealer of former article 4 (sections 7440–7448) and repealer of section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7441. Form of Motions Before Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12935(a), Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7442. Procedures for Motions Before Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12935(a), Government Code.

#### HISTORY

- 1. New subsection (a) filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7443. Decisions and Appeal.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12935(a), 12967, 12968, 12969 and 12981, Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7444. Permissible Motions Before Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12935(a), Government Code.

#### HISTORY

- 1. Amendment of subsection (a) filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).
- Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7445. Amended or Supplemental Accusations.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11507 and 12935(a), Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7446. Withdrawal of Accusation Prior to Hearing or Intervention by a Complainant.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12935(a), 12965 and 12967, Government Code.

#### HISTORY

Repealer filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7447. Discovery.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11507.5, 11507.6 and 12935(a), Government Code.

#### HISTORY

Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7448. Intervention and Amicus Briefs.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11500(b) and 12935(a), Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7450. Hearings.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11506, 12967, 12972 and 12981(b), Government Code.

#### HISTORY

- 1. New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer of former article 5 (sections 7450–7459.4) and repealer of section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

### § 7451. Time and Place of Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11500(a), 11508, 11509, 12935(a) and 12968, Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7452. Continuances.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11524, 12935(a) and 12968, Government Code.

#### HISTORY

- 1. Renumbering of former Section 7453 to Section 7452 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7453. Depositions of Unavailable Witnesses and Evidence by Affidavit.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11514 and 12935(a), Government Code.

#### HISTORY

- 1. Renumbering of former Section 7453 to 7452, and renumbering of former Section 7454 to Section 7453 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7454. Depositions of Unavailable Witnesses and Evidence by Affidavit.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11514 and 12935(a), Government Code.

#### HISTORY

1. Renumbering of Section 7454 to Section 7453 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 7455. Subpoenas.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11510, 12935(a), 12972, and 12981(b), Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7456. Pre-Hearing Statement.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12935(a), 12967, 12972 and 12981(b), Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

### § 7457. Conduct of Hearings.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11512, 11517(a) and 12935(a), Government Code; Feist v. Rowe (1970) 83 Cal. Rptr. 465, 3 Cal. App.3d 404; Cooper v. State Board of Medical Examiners of Dept. of Professional and Vocational Standards of California (1950) 217 630, 35

Cal.2d 242, 18 AL.R.2d 593; Leeds v. Gray (1952) 242 P.2d 48, 109 Cal.App.2d 874; Le Strange v. City of Berkeley (1962) 26 Cal.Rptr. 550, 210 Cal.App.2d 313; International Union of Operating Engineers, Local No. 12 v. Fair Employment Practice Commission (1969) 81 Cal. Rptr. 47, 276 C.A. 2d 504, certiorari denied 90 S. Co. 1356, 397 U.S. 1307, 25 L.Ed. 2d 648.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7458. Withdrawal of Accusation After Intervention by a Complainant or After Commencement of Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11512(b), 12935(a), 12969, 12972 and 12981(b), Government Code.

#### HISTORY

- 1. Amendment filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

### § 7459. Motions During Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11512, 12935(a), 12967, 12972 and 12981(b), Government Code.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

### § 7459.1. Motions for Nonsuit, Dismissal or Judgment.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11517(b), 12935(a), Government Code; Frost v. State Personnel Board (1961) 190 Cal. App.2d 1, 3-6; Kramer v. State Board of Accountancy (1962) 200 Cal. App.2d 163, 175; O'Mara v. State Board of Pharmacy (1966) 246 Cal. App.2d 8, 10-11.

#### HISTORY

1. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7459.2. Evidence Rules.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11511, 11513, 11514, 11515, 12972 and 12981(b), Government Code.

### HISTORY

- 1. New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- Repealer filed 3-15-99; operative 3-15-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7459.3. Default Hearings.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11520, 12935(a), 12967, 12972 and 12981(b), Government Code.

#### HISTORY

- 1. Renumbering of former Section 7459.4 to Section 7459.3 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7459.4. Default Hearings.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11520, 12935(a), 12967, 12972 and 12981(b), Government Code.

#### HISTORY

1. Renumbering of Section 7459.4 to Section 7459.3 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

# Article 6. Post-Hearing Matters

#### § 7460. Motions After Hearing.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12935(a), Government Code.

#### HISTORY

1. Repealer of former article 6 (sections 7460–7466) and repealer of section filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

## § 7461. Settlement or Withdrawal of Accusation.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12935(a), 12967, 12972 and 12981(a), Government Code.

#### HISTORY

- 1. Renumbering of former Section 7462 to Section 7461 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7462. Post-Hearing Briefs.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12935(a), Government Code

#### HISTORY

- 1. Renumbering of former Section 7462 to Section 7463, and renumbering of former Section 7463 to Section 7462 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7463. Adoption or Modification of Proposed Decision.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12935(a), Government Code.

#### HISTORY

- Renumbering of former Section 7463 to Section 7462, and renumbering of former Section 7464 to Section 7463 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

# § 7464. Non-Adoption of Proposed Decision.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11517 and 12935(a), Government Code.

#### HISTORY

- 1. Renumbering of former Section 7464 to Section 7463, and renumbering of former Section 7465 to Section 7464 filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7465. Filing and Effective Date of Decision.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11519(a) and 12935(a), Government Code.

#### HISTORY

- 1. Renumbering of former Section 7465 to Section 7464, and renumbering of former Section 7467 to Section 7465 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- 2. Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

#### § 7466. Service of Petition for Writ of Mandate.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 11521, Government Code.

#### HISTORY

- 1. New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- Repealer filed 3–15–99; operative 3–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 12).

### § 7467. Filing and Effective Date of Decision.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11519(a) and 12935(a), Government Code.

# HISTORY

1. Renumbering of Section 7467 to Section 7465 filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

# Subchapter 3. Investigative Hearing (Reserved)

# Subchapter 4. Advisory Agencies and Councils

(Reserved)

# Chapter 5. Contractor Nondiscrimination and Compliance

# Subchapter 1. General Matters

### § 8101. Office of Compliance Programs.

(a) Creation and Authority. The Department of Fair Employment and Housing (DFEH) is responsible for the administration of policies, the implementation of standards, and the enforcement of the rules and regulations set forth in this chapter. The DFEH has created the Office of Compliance Programs (OCP) to carry out these responsibilities. The OCP will operate under the procedures established in this chapter as well as under other procedures of the Commission as set out in this division.

COMMENT As of the date these regulations were adopted, DFEH headquarters and OCP were located at 1201 I Street, Suite 211, Sacramento, CA 95814, telephone (916) 323–4547.

(b) Administrator. The OCP will operate under the direction of an Administrator of Compliance Programs who shall be appointed by and be responsible to the Director of the Department. The Administrator will have direct responsibility for the appointment of staff and the organization and operation of the OCP consistent with the terms of the Act and the provisions of this chapter.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. Repealer of Chapter 5 (Sections 8317–8323) and new Chapter 5 (Subchapters 1–4, Sections 8101–8502, not consecutive) filed 12–17–82; effective thirtieth day thereafter (Register 82, No. 52). For prior history, see Register 81, No. 3.

#### § 8102. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this chapter, unless:

- (1) the context in which they are used clearly requires a different meaning; or
- (2) a different definition is prescribed for a particular subchapter or provision.

The definitions set forth previously in this division in Sections 7285.2, 7286.5, 7287.2, 7290.7, 7291.2(b), 7292.1, 7293.6, and 7295.1 are also applicable to this chapter.

- (a) Bid means any proposal or other request by an employer to a contract awarding agency wherein the employer seeks to be awarded a state contract.
- (b) Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.
- (c) Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any State of California real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (d) Contract or state contract means all types of agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, or construction to which a contract awarding agency is a party. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the is-

suance of job or task orders. It also includes supplemental agreements or contract modifications with respect to any of the foregoing.

- (e) Contract awarding agency or awarding agency means any department, agency, board, commission, division or other unit of the State of California which is authorized to enter into state contracts.
- (f) Contractor means any person having a contract with a contract awarding agency or a subcontract for the performance of a contract with such an agency.
- (g) Data means recorded information, regardless of form or characteristic.
  - (h) (Reserved)
- (i) Decertification means the decision by OCP that an employer's nondiscrimination program fails to comply with the requirements of the Fair Employment and Housing Act and/or its implementing regulations either because it is poorly designed or because it has not been properly implemented or because of the person's failure to cooperate with OCP it cannot be determined whether the nondiscrimination program meets the requirements of this chapter. Decertification of a program shall continue until OCP certifies that the contractor is in compliance with the requirements of this chapter.
- (j) Decision means the decision of the hearing officer regarding the allegations of a show cause notice issued pursuant to Section 8503 of this chapter. A decision shall dismiss, modify, or sustain the allegations of the show cause notice; provide the factual basis for the decision; and include any sanctions to be recommended to the awarding agency together with a statement of the reasons in support thereof.
- (k) Employee means an individual under the direction and control of a contractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written.
  - (l) (Reserved)
  - (m) May denotes the permissive.
- (n) Minority refers to an individual who is ethnically or racially classifiable in one of four major groups: Black, Hispanic. Asian or Pacific Islander; or American Indian or Alaskan Native.
- (1) Black includes persons having their primary origins in any of the black racial groups of Africa, but not of Hispanic origin;
- (2) Hispanic includes persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America, or other Spanish derived culture or origin regardless of race;
- (3) Asian/Pacific Islander includes persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa; and
- (4) American Indian/Alaskan Native includes persons having primary origins in any of the original peoples of North America, and who maintain culture identification through tribal affiliation or community recognition.
- (o) Nondiscrimination Clause means the clause to be included in each state contract or subcontract pursuant to these regulations.
- (p) Person means any business, individual, union, committee, club, or other organization or group of individuals.
- (q) Prime contractor means any individual or organization who directly contracts with the State of California.
- (r) Service and supply contract includes any contract except a construction contract.
- (s) Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include collective bargaining agreements or arrangements between parties which constitute that of employer and employee.
  - (t) Shall denotes the imperative.
- (u) Subcontract means any agreement or arrangement executed by a contractor with a third party in which the latter agrees to provide all or specified part of the supplies, services or construction required in the

original state contract. This does not include arrangements between parties which constitute that of employer and employee.

(v) Subcontractor means any individual or organization holding a subcontract for the performance of all or any part of a state contract.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. Amendment filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 8102.5. Nondiscrimination Agreement.

State contracts exempt from the requirements of Section 8107 shall include, as an express or implied term, the term set out in either Section 8107 Clause (a) or Clause (b). Breach of this term of contract may constitute a material breach of the contract, and may result in the imposition of sanctions by the awarding agency and may result in decertification from future opportunities to contract with the state.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

- New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).
- Editorial correction filed 7–5–83; and correction of HISTORY printing error (Register 83, No. 28).

### § 8103. Requirement of Nondiscrimination Program.

All employers who are, or wish to become, contractors with the state must develop and implement a nondiscrimination program as defined in Section 8104 of this chapter unless specifically exempted pursuant to Section 8115 of this chapter.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### § 8104. Nondiscrimination Program.

(a) Definition and Purpose. A nondiscrimination program (hereinafter referred to as "the Program") is a set of specific and result-oriented pro-

cedures to which a contractor or subcontractor commits itself for the purpose of insuring equal employment opportunity for all employees or applicants for employment. It may include an affirmative action component which establishes goals and timetables to remedy any underutilization of minorities and/or women which is identified. The Program shall contain the following elements:

- (1) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.
- (2) Formal internal and external dissemination of the contractor's policy.
- (3) Establishment of responsibilities for implementation of the contractor's program.
- (4) Annual identification of any existing practices which have resulted in disproportionately inhibiting the employment, promotion or retention of those protected by the Act.
- (A) Analysis of Employment Selection Procedures. The Program shall include an identification and analysis of contractor promotional and entry—level selection procedures and shall identify any such procedures which have resulted in disproportionately inhibiting the employment, promotion or retention of minorities or women. The retention of such practices so identified can only be justified according to the principles of "business necessity" upon a demonstration that no reasonable alternatives to such practices exist. The prospective contractor shall eliminate any practices which cannot be so justified.
- (B) Workforce Analysis. The Program will contain a workforce analysis which shall consist of a listing of each job title which appears in applicable collective bargaining agreements of payroll records ranked from the lowest paid to the highest paid within each department or other similar organizational unit, including departmental or unit supervisory personnel. For each job title, the total number of incumbents, and the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks,

[The next page is 357.]

Hispanics, Asian/Pacific Islanders, and American Indian/Native Alaskans. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed. If there are separate work units or lines of progression within a department, a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or disciplines, in order of wage rates or salary ranges.

- (C) Utilization Analysis. Employers with 250 or more employees must perform a utilization analysis which shall consist of an analysis of the major job groups at the facility in order to determine whether women and minorities are being underutilized when compared to their availability. A job group for this purpose shall consist of one or more jobs which have similar content, wage rates and opportunities. Underutilization is defined as having a statistically significant lower utilization of minorities or women in a particular job group than their availability. Availability is defined as the availability in the labor force. The labor force for this purpose may vary depending upon the type of job in question, and the contractor's past practice, and could encompass the contractor's existing employees, the area immediately surrounding the facility where the vacancy exists for low–skill jobs or it could encompass the entire nation for highly–skilled managerial positions. The employer shall conduct a separate utilization analysis for each minority group and women.
- (5) Development and execution of action oriented programs designed to correct problems and attain equal employment opportunities for all applicants and employees.
- (6) Design and implementation of internal audit and reporting systems to measure the effectiveness of the total program.
- (b) Employers who have identified a practice or practices which have an adverse impact on one or more groups protected by the Act and which may unlawfully discriminate against members of such groups may wish to include an affirmative action component in their nondiscrimination programs to minimize liability for discrimination, and correct past injustices; such affirmative action may be required of employers who are found to have discriminated in violation of the Act. Such a voluntary affirmative action component might contain, but need not be limited to, the following:
- (1) Active support of local and national community action programs and community service programs designed to improve the employment opportunities of minorities and women;
- (2) Providing training opportunities to minorities and women within the employer's organization which will qualify them for promotion when openings become available;
- (3) Encouraging qualified women and minorities within the employer's organization to seek and accept transfers and promotions which increase their future opportunities;
- (4) Actively recruit qualified minorities and women, even those not currently seeking such employment;
- (5) Establishing and/or supporting training programs for entry level positions; and
- (6) Establishing goals and objectives by organizational units and job groups, including timetables for completion. Establishment and implementation of a nondiscrimination program which contains an effective affirmative action component will create a rebuttable presumption that a contractor is in compliance with the requirements of Government Code, Section 12990 and its implementing regulations.
- (c) An employer with multiple facilities may establish a single nondiscrimination program for its organization, but must perform separate analyses pursuant to subsections (a)(4)(A), (B), and (C) above for each establishment.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. Amendment of subsection (a)(4)(A) filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

# § 8106. Prima Facie Compliance.

Compliance with a nondiscrimination or affirmative action program subject to review and approval by a federal compliance agency shall constitute prima facie evidence that a contractor has complied with the requirements of Sections 8103 and 8104, unless the federal agency has found that the program is not in compliance with federal law, in which case compliance with a current federal commitment letter or conciliation agreement shall constitute prima facie evidence that a contractor has complied with the requirements of Sections 8103 and 8104. Such prima facie evidence can be rebutted by a preponderance of the evidence to the contrary.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### § 8107. Nondiscrimination Clause.

Each state contract shall contain a Nondiscrimination Clause unless specifically exempted pursuant to Section 8115. The governmental body awarding the contract may use either clause (a) or clause (b) below. Clause (a) will satisfy the requirements of Section 12990 of the Government Code only; clause (b) contains language which will satisfy the requirements of both the Fair Employment and Housing Act and Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (adopted pursuant to Government Code, Sections11135–11139.5). Standardized state form OCP–1, containing clause (a), and OCP–2, containing clause (b), will be available through the OCP. These forms may be incorporated into a contract by reference and will fulfill the requirement of this section. The contracting parties may, in lieu of incorporating form OCP–1 or OCP–2, include the required clause in the written contract directly.

Clause (a)

- 1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Cod, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Clause (b)

1. During the performance of this contract, the recipient, contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

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- 2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.), the regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1. Division 3, Title 2 of the Government Code (Gov. Code, Sections 11135–11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.
- 3. Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.
- 4. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 5. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

 Amendment filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 8108. Subcontracts.

The contractor shall include the nondiscrimination clause in its contract in all subcontracts to perform work under the contract, either directly or by incorporation by reference. Any such incorporation by reference shall be specific and prominent.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

# § 8109. Enforcement of Clause.

The "Nondiscrimination Clause" in state contracts and subcontracts shall be fully and effectively enforced. Any breach of its terms may constitute a material breach of the contract and may result in the imposition of sanctions against the contractor, including but not limited to cancellation, termination, or suspension of the contract in whole or in part, by the contract awarding agency or decertification from future opportunities to contract with the State of California by DFEH.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

# § 8112. Contract Awarding Agency, Unresponsive Bids.

- (a) A contract awarding agency shall refuse to accept a bid or proposal on a state contract subject to this chapter when the bid is unaccompanied by a "Statement of Compliance" pursuant to Section 8113, and shall declare any such bid or proposal unresponsive.
- (b) A contract awarding agency shall declare unresponsive any bid or proposal on a state contract that is submitted by a contractor on OCP's list of decertified contractors.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

 New subsection (b) filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 8113. Statement of Compliance.

- (a) As a part of its bid an eligible prospective contractor which bids on a state contract must submit a statement under penalty of perjury to the awarding agency that it has complied with the requirement of Section 8103 of this chapter.
- (b) No state contract, unless otherwise exempted pursuant to Section 8115, shall be awarded by any contract awarding agency unless the pro-

spective contractor has filed with the agency as a part of its bid a statement, made under penalty of perjury, that the prospective contractor has complied with the requirements of Section 8103 of this chapter.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Ref-

### § 8114. Subcontracting Prohibited with Ineligible Entities.

erence: Section 12990, Government Code.

- (a) OCP shall establish and maintain a list of decertified contractors, which shall be updated monthly and published in the first California Notice Register published each month.
- (b) No contractor with the State of California shall, during the performance of any contract with the State, enter into any subcontract with any person listed on OCP's list of decertified contractors during the month in which the bid is submitted.
- (c) Subcontracting with a decertified contractor in violation of the provisions of this section may constitute a material breach of the contract and may result in the imposition of sanctions against the contractor, including but not limited to cancellation, termination, or suspension of the contract, in whole or in part by the awarding agency, or decertification by DFEH. Specific knowledge of the unlawfulness of the subcontract is not required to establish a breach, but will be considered by OCP and the contract awarding agency in their determination of the appropriate sanctions. NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 8115. Exemptions.

- (a) Licensed rehabilitation workshops which are contractors of state contracting agencies are exempted from the requirements of this chapter.
- (b) Contracts of less than \$5,000 are automatically exempt from the requirements of Section 8107; contractors holding only such contracts are automatically exempt from the requirements of Section 8103, but are subject to Section 8102.5.
- (c) A contractor with fewer than fifty (50) employees in its entire workforce may receive an automatic exemption from the Program requirements of Section 8104, subdivisions (a)(4)(B)–(C) pertaining to workforce and utilization analyses by filing a current "California Employer Information Report" annually with OCP. The OCP may remove any exemption granted under this subsection, in connection with any detailed review or any investigation instituted pursuant to Section 8401 or 8402, or whenever the contractor is found to be in substantial noncompliance with the requirements of this chapter.
- (d) Contracts and subcontracts which are awarded pursuant to a declaration of public emergency, a declaration or determination of emergency pursuant to Government Code, Section 14809 or Government Code, Section 14272, subdivision (a), (b), or (c), or a declared threat to the health, welfare or safety of the public are fully exempted from the requirements of Section 8107, and contractors holding only such contracts are exempted from the requirements of Section 8103, but remain subject to Section 8102.5.
- (e) A construction contractor with fewer than 50 permanent employees may obtain an exemption from the requirements of Section 8104, subdivision (a)(4)(B)–(C) pertaining to workforce and utilization analyses by filing a CEIR annually with OCP. The OCP may remove any exemption granted under this subsection, in connection with any detailed review or any investigation instituted pursuant to Section 8401 or 8402, or whenever the contractor is found to be in substantial noncompliance with the requirements of this chapter.
- (f) Exemptions of subsections (a) and (d) of this section shall be granted only upon application to the state contract awarding agency prior to the date the contract is awarded. The contract awarding agency shall, prior to the grant of any exemption under this section, require proof of satisfaction of the exemption conditions of this section. The OCP may issue opinion letters and guidelines from time to time to assist contact awarding agencies in making determinations under this section.

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NOTE: Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

#### HISTORY

 Amendment filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

## § 8116. Advertisements for New Employees.

In all written advertisements or recruitment efforts for new employees during the performance of a regulated contract, a contractor is required to prominently identify itself with the phrase "State Equal Opportunity Employer" or similar wording.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

### § 8117. Recruitment.

In the event that any labor organization from which employees are normally recruited and/or with which the contractor has a collective bargaining agreement is unable or unwilling to refer minorities or women the contractor or subcontractor shall take the following steps and, for a period of two years, keep a record thereof:

- (a) Notify the California Employment Development Department and at least two minority or female referral organizations of the personnel needs and request appropriate referrals, and
- (b) Notify any minority or female persons who have personally listed themselves with the contractor or subcontractor as seeking employment of any existing vacancies for which they may qualify;
- (c) Notify minority, women's and community organizations that employment opportunities are available.
- (d) Immediately notify OCP of the existence of the historical and present relationship between the contractor and labor organizations and detail the efforts of the contractor to secure adequate referrals through the labor organizations.

Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under Government Code, Section 12990, or the regulations in this chapter.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

# § 8117.5. Notice of Contract.

Contract awarding agencies shall give written notice to the Administrator within 10 working days of award of all contracts over \$5,000. The notice shall include name, address and telephone number of the contractor; federal employer identification number; state contract identification number; date of contract award; contract amount; project location; name of contractor's agent who signed the contract; name of contract awarding agency and contract awarding officer; and brief description of the purpose or subject of the contract.

NOTE: Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

# § 8118. Contract Forms.

The State Department of General Services will have printed copies of the forms referred to in this chapter and shall make them available upon request.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

## § 8119. Access to Records and Employment Site.

(a) Each contractor shall provide OCP with any relevant information requested and shall permit OCP access to its premises, upon reasonable notice, during normal business hours for the purpose of conducting onsite compliance reviews, employee interviews, and inspecting and copying such books, records, accounts and other material as may be relevant to a matter under investigation for the purpose of determining and enforcing compliance with this chapter.

(b) All information provided to DFEH in response to a request from OCP which contains or might reveal a trade secret referred to in Section 1905 of Title 18 of the United States Code, or other information that is confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall be considered confidential, except that such information may be disclosed to other officers or employees of DFEH and may be introduced as evidence in any hearing conducted pursuant to Section 8503 of this Chapter or Section 12967 of the Government Code. The hearing officer or the director shall issue such orders as may be appropriate to protect the confidentiality of such information.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

## § 8120. Complaints of Discrimination or Noncompliance.

(a) Any interested person may lodge a written complaint of noncompliance with either DFEH or the contract awarding agency. The complaint shall state the name and address of the contractor, and shall set forth a description of the alleged noncompliance. Complaints lodged with the awarding agency shall be immediately referred to the Administrator of OCP. No complaint may be lodged after the expiration of one year from the date upon which the alleged noncompliance occurred.

OCP shall cause any written complaint lodged under the provisions of this section on which it intends to take action to be served, either personally or by ordinary first class mail, upon the respondent contractor and the awarding agency within 45 days. At the discretion of the Administrator, the complaint may not contain the name of the complaining party.

(b) OCP shall notify the contract awarding agency of any action pursuant to Section 8501 instituted against a contractor of the agency, and permit the agency to become a party to the action, except that the agency shall be fully responsive to any request for information made by OCP in connection with the action.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

# Subchapter 2. Regulations Applicable to Construction Contracts

#### § 8200. Scope.

This subchapter applies to all nonexempt businesses which seek or hold any state construction contract or subcontract. The regulations in this subchapter are applicable to all of a construction contractor's employees who are engaged in on–site construction including those employees who work on a construction site where no state work is being performed.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### § 8201. Notice of Requirements.

The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all nonexempt state construction contracts and subcontracts, except that newspaper or trade publication advertisements need only state that the contract is subject to state contractor nondiscrimination and compliance requirements pursuant to Government Code, Section 12990:

# NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)

Your attention is called to the "Nondiscrimination Clause" set forth or referred to herein, which is applicable to all nonexempt state construction contracts and subcontracts and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth herein. The Specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

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# § 8202. Application to Permanent and Temporary Workforce.

A construction contractor's nondiscrimination program established pursuant to Sections 8103 and 8104 of this chapter must ensure nondiscrimination within both its permanent workforce and its temporary onsite workforce. The Section 8104 requirements of workforce and utilization analyses, however, must be prepared only for permanent employees. NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### § 8202.5. Transfers Prohibited.

It is a violation of the contract, of Government Code Section 12990 and the regulations in Chapter 5 of Division 4 of Title 2 of the California Administrative Code to transfer women and minority employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's nondiscrimination obligations.

NOTE: Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

#### HISTORY

New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

# § 8203. Standard California Nondiscrimination Construction Contract Specifications. (Gov. Code, Section 12990.)

In addition to the nondiscrimination clause set forth in Section 8107, all non-exempt state construction contracts and subcontracts of \$5,000 or more shall include the specifications set forth in this section.

# STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE, SECTION 12990)

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.

- 1. As used in the specifications:
- a. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;
  - b. "Minority" includes:
- (i) Black (all persons having primary origins in any of the black racial groups of Africa, but not of Hispanic origin);
- (ii) Hispanic (all persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish derived culture or origin regardless of race);
- (iii) Asian/Pacific Islander (all persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and
- (iv) American Indian/Alaskan Native (all persons having primary origins in any of the original peoples of North America and who maintain culture identification through tribal affiliation or community recognition).
- 2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall physically include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.
- 3. The contractor shall implement the specific nondiscrimination standards provided in paragraphs 6(a) through (e) of these specifications.
- 4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Government Code, Section 12990, or the regulations promulgated pursuant thereto.
- 5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the

contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations

- 6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under Steps a. through e. below:
- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on–site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Provide written notification within seven days to the director of DFEH when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- c. Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.
- d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on–site foremen, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
- e. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.
- 7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor—union, contractor—community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's.
- 8. The Contractor is required to provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) if a particular group is employed in a substantially disparate manner.
- 9. Establishment and implementation of a bona fide affirmative action plan pursuant to Section 8104 (b) of this Chapter shall create a rebuttable presumption that a contractor is in compliance with the requirements of

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Section 12990 of the Government Code and its implementing regulations.

- 10. The Contractor shall not use the nondiscrimination standards to discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical handicap, medical condition, marital status or age over 40.
- 11. The Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code Section 12990.
- 13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. Amendment filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 8204. Reporting Requirement.

Contractors holding construction contracts of \$50,000 or more must submit quarterly utilization reports to OCP on forms to be provided by OCP. In such reports the contractor must provide identifying information and report the number and percentage of journey worker, apprentice, and trainee hours worked in each job classification by sex and ethnic group, together with the total number of employees and total number of minority employees in each classification by sex. The quarterly utilization reports must cover each calendar quarter and must be received by OCP no later than the 15th day of the month following the end of the quarter (April 15, July 15, October 15, and January 15). Contractors who are required to submit utilization reports to the federal government may submit a copy of the federal report to the OCP at the same time they submit the report to the federal government in lieu of the state quarterly utilization report. NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

 New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

## § 8205. Effect on Other Regulations.

The Regulations in this subchapter are in addition to the regulations contained in this division which apply to contractors and subcontractors generally. See particularly, California Administrative Code, Title 2, Division 4, Chapter 1 through 5, Sections 7285.0 through 7285.7, 7286.3 through 7296.4, 7400 through 7469.1, 8100 through 8120, and 8400 through 8407.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990. Government Code.

#### HISTORY

1. New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

# Subchapter 3. Regulations Applicable to Service and Supply Contracts

# Article 1. Small Contracts

# § 8300. Scope.

This subchapter applies to all contractors which seek or hold any non-exempt state service and supply contract or subcontract.

NOTE: Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

### § 8301. Definition of Small Contract.

All state contracts with a dollar value of twenty-five thousand dollars (\$25,000) or less are for purposes of this subchapter defined as "small" contracts.

NOTE: Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

#### § 8302. Post Award Filing.

Contractors awarded small contracts need not file any information with OCP after execution of the contract, but must provide OCP access to records required under Section 8303 upon request.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference, Section 12990, Government Code.

#### § 8303. Post Award Compliance.

- (a) Each contractor of a "small" contract shall compile and shall maintain for inspection for two years after award:
- (1) Information regarding the contractor: Federal Employer Identification number; state contract identification number; legal name of the business organization, parent corporation or other outside ownership interest, if applicable, business telephone number, street address, city, state and zip code; mailing address, if different; total number of employees, identified by sex, race and national origin; name, business phone and mailing address of contractor's EEO/AA officer, if there is one, and name of the person responsible for the maintenance of information required pursuant to subsection (b) below.
- (2) Information regarding the contract: Dollar value of contract; time for performance of the contract; date of contract award; name of contract awarding agency, and contract awarding officer; brief description of the purpose or subject of the contract.
- (3) A copy, if one was required to be prepared of the prime contractor's current California Employer Identification Report (CEIR), or equivalent federal form (See Section 7287.0(a) of this division regarding the preparation of CEIR's.)
- (b) Failure to comply with the requirements of this section may result in a determination that the contractor has materially breached the state contract and the decertification of the contractor from future state contracts.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Sections 12990, Government Code.

#### HISTORY

1. New subsection (b) filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

## § 8304. Verification.

A contract awarding agency shall, upon request by OCP, verify information provided to OCP by an agency contractor performing a small contract. Such requests for verification shall be limited to that information required by OCP on any standardized state forms or other form where such information is specifically required by these regulations, and such information is also contained in the awarding agency's files.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

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# **Article 2. Regulated Contracts**

# § 8310. Regulated Contracts, Dollar Value.

All State contracts with a dollar value of more than twenty–five thousand dollars (\$25,000) are for the purposes of this subchapter classified as "regulated" contracts.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### § 8311. Post Award Informational Filing.

- (a) The prime contractor of a "regulated" contract shall file with OCP within twenty-eight (28) days from the date of execution of a "regulated" contract or the effective date of these regulations, whichever occurs later:
- (1) Information Regarding the Contractor: Federal Employer Identification Number; state contract identification number; legal name of the business organization; business telephone number, street address, city, state and zip code; mailing address, if different; name, business phone and mailing address of contractor's EEO/AA Officer.
- (2) Information Regarding the Contract: Dollar value of contract; date of contract award; name of contract awarding agency, and contract awarding officer; brief description of the purpose or subject of the contract.
  - (3) (Reserved)
- (4) A copy of the prime contractor's current California Employer Identification Report (CEIR) or equivalent federal form (EEO-1). If the prime contractor is not otherwise required to prepare a CEIR, it must do so in order to comply with the requirements of this section. (See Section 7287.0 (a) of this division regarding the preparation of CEIR's.)

This information shall be updated annually thereafter, so long as the contractor remains subject to these regulations.

- (b) Contractors awarded more than one state contract in one year may file only the information required in subdivision (a)(2) and (a)(4) above for the second and all subsequent contracts awarded during the year.
- (c) The OCP and the contract awarding agency shall make forms available for providing the information required under this section.
- (d) Failure to comply with the requirements of this section may result in a determination that the contractor has materially breached the state contract and the decertification of the contractor from future state contracts.

NOTE: Authority cited: Sections 12935(a), and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. New subsection (d) filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 8312. Designating EEO/Affirmative Action Officer.

All contractors of regulated contracts shall designate an individual responsible for the implementation of the contractor's Nondiscrimination Program.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

# Subchapter 4. OCP Review Procedures

#### § 8400. Scope.

This subchapter sets forth the review procedures to be followed by OCP in implementing this chapter.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

### § 8401. OCP Review Procedures.

In order to monitor the equal employment practices of contractors and their compliance with the requirements of this chapter, contractors shall be subject to review. Contractors may be selected for review on the basis of any specific neutral criteria contained in a general administrative plan for the enforcement of this chapter.

- (a) Desk Review. All contracts shall be subject to desk reviews conducted by and at the discretion of OCP. A desk review will involve a review of the applicable contract(s), the information required of the contractor pursuant to Section 8303 or 8311 of these regulations, the compliance with and implementation of the Program required by this Chapter, and any additional related information required by OCP. In addition, OCP may review the current and past personnel procedures and practices of a contractor whenever such a review is, within the discretion of OCP, considered appropriate.
- (b) Field Review. OCP may conduct a field review of a contractor's workplace. Field reviews will be made during contractor's regular business hours. OCP shall notify the contractor of its intent to conduct a field review under this section and shall arrange a mutually convenient time to conduct it.
- (c) A contractor will not be selected for a routine desk or field review if it has been the subject of such a review within the preceding 24 months and was found to be in compliance. Prior review will not exempt a contractor from compliance investigations conducted pursuant to Section 8402, or follow—up desk or field reviews.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

# § 8402. Compliance Investigations.

- (a) OCP may conduct a compliance investigation of a contractor's employment practices for the purpose of determining whether the contractor holding a state contract is acting or has acted in violation of the nondiscrimination and compliance requirements imposed by this chapter. Investigations under this section shall involve a detailed review of the contractor's entire employment practices and procedures. Investigations under this section may be conducted when the Administrator determines a pattern of unlawful discrimination in employment may have occurred within the past twelve months or be ongoing. Such a determination shall be in writing and shall be based upon:
  - (1) A complaint by a contract awarding agency; or
- (2) The results of the regular compliance review activities of the OCP;
- (3) A notice of any complaint of employment discrimination filed pursuant to Section 8120 of this Chapter or Government Code, Section 12960; or
- (4) The failure of the contractor to provide compliance information required by this chapter or reasonably requested by OCP.
- (b) Whenever a contractor which is the subject of a compliance investigation pursuant to this section is also the subject of a complaint pursuant to Government Code, Section 12960, if possible, OCP and any other unit of DFEH investigating the contractor's employment practices shall coordinate their investigations.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

# § 8403. Letters of Commitment.

If, in the course of a compliance investigation, OCP concludes that a contractor may be in violation of the provisions of this chapter, OCP and the contractor may informally agree to resolve the identified deficiencies through the mechanism of a written letter of commitment. The letter of commitment shall set forth the deficiencies identified by OCP, the action the contractor shall take to correct the deficiencies, and the time by which the corrective action shall be taken and the deficiencies resolved.

NOTE: Authority cited: Sections 12935 (a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

# Subchapter 5. OCP Enforcement Proceedings

### § 8500. Scope.

This subchapter sets forth the enforcement procedures to be followed by OCP in implementing this chapter.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

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#### § 8501. Show Cause Notice.

(a) When the Administrator has reasonable cause to believe that a contractor performing under a state contract is in violation of the nondiscrimination and compliance requirements imposed by this chapter or is in violation of a letter of commitment or conciliation agreement, he or she may issue a notice requiring the contractor to show cause before a hearing officer, why appropriate action to ensure compliance should not be instituted. The show cause notice shall specifically state the contractor's noncompliance and any recommended sanctions. The show cause notice shall be dated and served on the contractor personally or by registered mail, and such service shall constitute notice to the contractor of the deficiencies. In addition, the show cause notice shall be served by ordinary first class mail on the contract awarding agency. A hearing on the show cause notice shall be held no sooner than the thirtieth day after the issuance of the show cause notice but shall be at the earliest date OCP can reasonably schedule the hearing.

(b) During the thirty (30) day "show cause" period, OCP and the contractor shall make every effort to resolve the deficiencies which led to the issuance of the show cause notice through conciliation, mediation, and persuasion.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. New subsection (a) filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

#### § 8502. Conciliation Agreements.

At the discretion of the Administrator, deficiencies contained in a show cause notice may be resolved through the use of written conciliation agreements. A conciliation agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted. In addition, the Administrator may require periodic compliance reports detailing the actions taken by the contractor to correct the deficiencies, and identifying statistical results of such actions.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### § 8503. Hearing.

If the deficiencies listed in the show cause notice are not resolved during the thirty (30) day period, a hearing shall be held before a hearing offi-

cer appointed by the Director of the Department of Fair Employment and Housing.

A notice of hearing will be dated and served upon the contractor personally or by registered mail. The hearing may be postponed by OCP for good cause. If the contractor has good cause, the contractor shall contact the OCP within 10 days of receiving notice of hearing.

The procedures of hearing shall include: testimony under oath, the right to cross-examination and to confront adversary witnesses, the right to representation, and the issuance of a formal decision.

In addition to the above requirements of this section, the hearing shall be conducted in accordance with Government Code Sections 11507.6, 11507.7, 11508 (with the exception that the Office of Compliance Programs shall be substituted for the Office of Administrative Hearings), 11510, 11511, 11512(c) and (d), 11513, 11514, 11520, 11523; the sections cited above are incorporated herein by reference.

The hearing officer shall decide whether to dismiss, modify or sustain the allegations of the show cause notice.

The form and content of the decision will be in accordance with the requirements of Government Code Section 11518 herein incorporated by reference.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

 New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

# § 8504. Potential Remedies.

If a violation of this chapter is found at the hearing, the hearing officer may decertify the contractor's nondiscrimination program and may recommend to the contract awarding agency that the existing contract be terminated. Decertification shall continue until the deficiency is corrected and satisfactory evidence thereof is presented to OCP. Other potential remedies include, but are not limited to the imposition of periodic reporting requirements and the withdrawal of exemptions.

NOTE: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

#### HISTORY

1. New section filed 6–2–83; effective thirtieth day thereafter (Register 83, No. 23).

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Barclays Official

# CALIFORNIA CODE OF REGULATIONS

# Title 2. Administration

Division 4.5. Local Agency Deposit Security

Vol. 3



# **Division 4.5.** Local Agency Deposit Security

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# Division 4.5. Local Agency Deposit Security

# Chapter 2. Administrator of Local Agency Security

# Subchapter 1. General Provisions

# Article 1. Citation, Numbering, Construction, Severability

# § 16001.1.1. Citation.

This Chapter may be cited as the "Local Agency Deposit Security Regulations."

NOTE: Authority cited for Chapter 2: Section 53661, Government Code, as operative 7–1–70. Reference: Art. 2, Chap. 4, Part 1, Division 2, Title 5, Government Code

#### HISTORY

- 1. New Chapter 2 (Sections 16001.1.1 through 16010.1.3—not consecutive) filed 6–17–70 as an emergency; designated effective 7–1–70. Certificate of Compliance—Section 11422.1, Government Code, included (Register 70, No. 25).
- Editorial redesignation of Chapter 2 (Sections 16001.1.1–16010.1.3, not consecutive) from Division 4 to Division 4.5 (Register 80, No. 29).

## § 16001.1.2. Section Numbers.

The number of each Section in this Chapter consists of three or more units, each separated from the other by a decimal point. The first unit consists of five digits; the first three digits are "160," and the last two digits correspond with the Subchapter number. The second unit corresponds with the Article number. The third unit represents the sequential order of the Section within the Article. The fourth and succeeding units, if any, represent the sequential order of the Section within the preceding unit. Thus, Section 16001.1.2 is the second Section in Article 1, Subchapter 1 of this Chapter.

# § 16001.1.3. Construction.

In this Chapter, unless the context otherwise requires:

- (a) Words in the singular number include the plural, and in the plural include the singular.
- (b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

# § 16001.1.4. Severability.

If any provision or clause of this Chapter or application thereof to any person or circumstances is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this Chapter which can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this Chapter are declared to be severable.

# Article 2. Definitions

## § 16001.2.1. Definitions.

Subject to additional definitions contained in this Chapter which are applicable to specific Subchapters, Articles, or Sections thereof, and unless the context otherwise requires, in this Chapter:

- (a) "Active deposit" means a deposit that is payable on demand.
- (b) "Addition of a security" means a depository's placement of a security into a security pool without a simultaneous withdrawal of a security from such security pool.
- (c) "Administrator" means the Administrator of Local Agency Security of the State of California or any person to whom the Administrator delegates the responsibility to act for him in the particular matter.

- (d) "Agent of depository" means:
- (1) The Federal Home Loan Bank of San Francisco, if it accepts and holds a security that secures a secured local agency deposit; or
- (2) A trust company or the trust department of a state or national bank located in this State which accepts and holds a security that secures a secured local agency deposit.
  - (e) "Business day" means every day except Saturday or a holiday.
- (f) "Deposit contract" means a contract for the deposit of moneys belonging to or in the custody of a local agency which the treasurer of such local agency enters into with a depository in accordance with Government Code Section 53649.
- (g) "Depository" means a depository as defined in Government Code Sections 53630(c), (h) and (i), and 53630.5.
- (h) "Duly authorized," when used with respect to an officer or employee of a depository or of an agent of depository, means an officer or employee who is by name authorized by the board of directors of the depository or of the agent of depository, as the case may be, to perform the function referred to.
- (i)(1) "Eligible security" means any eligible security (non–REN) or eligible security (REN).
- (2) "Eligible security (non–REN)" means any of the securities listed in Government Code Section 53651, except for subdivisions (m) and (p). However, "eligible security (non–REN)" does not include any security which the Administrator pursuant to Government Code Section 53661(g) has determined is not qualified to secure a secured local agency deposit.
- (3) "Eligible security (REN)" means any promissory note which is secured by a first lien on improved residential real property located in this State and which meets the following requirements:
- (A) The unpaid principal balance of the note (i) does not exceed 80 percent of the fair market value of the real property, as determined by proper appraisal or (ii) is insured or guaranteed by the United States or by an agency of the United States;
  - (B) The note has been outstanding for not less than six months; and
- (C) At the time when the note is placed in a security pool, no payment on the note is more than 30 days past due, and at any time after the note has been placed in a security pool, no payment on the note is more than 60 days past due.

However, "eligible security (REN)" does not include any promissory note which is described in Government Code Section 53651.2(b) or which the Administrator pursuant to Government Code Section 53661(g) has determined is not qualified to secure a secured local agency deposit.

- (j) "Holiday" means any day which is designated, in whole or in part, as a holiday in Government Code Sections 6700 or 6701; provided, however, that "holiday" in Subchapter 9 of this Chapter shall have the meaning set forth in Section 16009.1.1 of this Chapter.
- (k) "Inactive deposit" means any deposit other than an active deposit.
- (*l*) "Local agency" shall have the meaning set forth in Government Code Section 53630(a).
- (m) "Local agency deposit" means a deposit which is subject to or made in accordance with the Local Agency Deposit Security Law.
- (n) "Local Agency Deposit Security Law" means Article 2 (commencing with Section 53630), Chapter 4, Part 1, Division 2, Title 5 of the Government Code, as the same or any provision thereof may be amended, added, or repealed.
- (o) "Market value," when used with respect to an eligible security (REN), means the value determined in accordance with regulations adopted by the State Treasurer under Government Code Section 53651.2(e).
- (p) "Minus substitution of securities" means a substitution of securities in which the market value of the security added to a security pool is less than the market value of the security withdrawn from such security pool.

- (q) "Plus substitution of securities" means a substitution of securities in which the market value of the security added to a security pool equals or exceeds the market value of the security withdrawn from such security pool.
- (r) "Secured local agency deposit" means a local agency deposit less any portion thereof (1) for which the treasurer of the local agency has waived security pursuant to Government Code Section 53653 and which is insured by the Federal Deposit Insurance Corporation, (2) which constitutes uncollected funds, or (iii) which is otherwise not required by law to be secured.
- (s)(1) "Security pool" includes any security pool (non–REN) or security pool (REN) and shall have the following meaning:
- (A) In case an agent of depository holds securities for the purpose of securing two or more secured local agency deposits in a depository and pools such securities, such pooled securities shall be deemed to be a security pool.
- (B) In case an agent of depository holds securities for the purpose of securing two or more secured local agency deposits in a depository and does not pool such securities, so many of such securities as are held for the purpose of securing each such secured local agency deposit shall be deemed to be a security pool.
- (C) In case an agent of depository holds securities for the purpose of securing a single secured local agency deposit in a depository, such securities shall be deemed to be a security pool.
- (2) "Security pool (non-REN)" means a security pool which consists of securities (non-REN).
- (3) "Security pool (REN)" means a security pool which consists of securities (REN).
- (t) "Substitution of securities" means a depository's simultaneous addition of a security to, and withdrawal of security from, a security pool.
- (u) "Treasurer" means the treasurer of a local agency or, if a local agency has no treasurer, the officer or employee of such local agency who performs duties with respect to deposit of moneys usually performed by a treasurer.
- (v) "Uncollected funds" shall have the meaning set forth in Section 16001.5.13 of this Chapter.
- (w) "Withdrawal of a security" means a depository's withdrawal of a security from a security pool without a simultaneous addition of a security to such security pool.

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

#### HISTORY

- 1. Amendment filed 3–2–72 as an emergency; designated effective 3–4–72 (Register 72, No. 10).
- 2. Certificate of Compliance filed 6-9-72 (Register 72, No. 24).
- 3. Amendment of subsection (h) filed 10-8-76 as an emergency; effective upon filing (Register 76, No. 41).
- 4. Certificate of Compliance filed 2-4-77 (Register 77, No. 6).
- Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).
- 6. Redesignation of subsections (d)(A)–(B) as (d)(1)–(2), repealer of subsection (e) and subsection relettering, and amendment of newly designated subsections (g), (i)(2), (i)(3)(C), (j), (o) and (r) filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# Article 3. Administration

# § 16001.3.1. Office of Administrator.

The office of the Administrator is located at 111 Pine Street, Suite 1100, San Francisco, California 94104 (Telephone: (415) 263–8543.] NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

#### HISTORY

- 1. Amendment filed 11–10–71 as procedural and organizational; designated effective 11–22–71 (Register 71, No. 46).
- Amendment filed 7-22-75 as procedural and organizational; designated effective 7-23-75 (Register 75, No. 30).

3. Amendment of section and new Note filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

### § 16001.3.2. Payment of Fees and Assessments.

Fees and assessments payable to the Administrator may be paid by means of check made payable to the order of the "Administrator of Local Agency Security." Such checks need not be certified.

#### § 16001.3.3. Forms.

Copies of the forms which are illustrated in Subchapter 10 of this Chapter are available from the Administrator upon request.

# § 16001.3.4. Waiver of Regulations.

#### HISTORY

1. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# Article 4. Hearings

#### § 16001.4.1. Scope.

This Article governs the conduct of all hearings held in connection with matters pending before the Administrator.

#### § 16001.4.2. Initiation of Hearing.

The Administrator shall commence a hearing by service of a notice of hearing.

# § 16001.4.3. Request for Hearing—Form, Contents, and Execution.

Whenever the Local Agency Deposit Security Law or this Chapter provides for the filing of a request for a hearing with the Administrator, such request shall be in writing, addressed to the Administrator, and if made by depository or agent of depository, executed on behalf of such depository or agent of depository by a duly authorized officer thereof. The request shall state the reasons why the person filing the request requests a hearing, specify the issues which such person requests to be considered at the hearing, and summarize the evidence which such person intends to present at the hearing.

# § 16001.4.4. Notice of Hearing—Contents.

A notice of hearing shall contain the following:

- (a) Brief statement of the facts which give rise to the hearing.
- (b) Statement of the issues to be considered at the hearing.
- (c) Time and place of the hearing.

# § 16001.4.5. Notice of Hearing—Service and Publication.

A notice of hearing shall be served as provided in this Chapter and, in addition, may be otherwise distributed or published as the Administrator may order.

### § 16001.4.6. Time of Notice.

A notice of hearing shall be served not less than five days nor more than 30 days prior to the date fixed for the hearing, unless the Administrator for good cause shown prescribes a shorter time of notice.

### § 16001.4.7. Hearing Officer.

The hearing officer shall be designated by the Administrator and may be the Administrator.

#### § 16001.4.8. Continuances.

A hearing shall be held at the time and place set forth in the notice of hearing, but may at such time or from time to time be continued by the hearing officer from day to day or adjourned to a later date or to a given place, without notice other than the announcement thereof at the hearing.

# § 16001.4.9. Procedure and Evidence.

The hearing officer shall determine the order in which evidence may be presented, as required by the circumstances of the particular matter. Witnesses shall give evidence upon oath or affirmation, and each interested party shall have the right to call and examine witnesses and crossexamine opposing witnesses in any manner relevant to the issues. Any

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relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, whether or not admissible over objection in a civil action. The hearing officer shall have authority to rule on the admission or exclusion of evidence and to take all necessary action to insure the fair and orderly conduct of the hearing. The hearing officer may take official notice of any generally accepted technical or scientific matter within the Administrator's special field of competency and also of any fact which may be judicially noticed by the courts.

# Article 5. Miscellaneous

## § 16001.5.1. Security Pool.

A depository may maintain one or more security pools; provided, however, that no depository shall maintain more than one security pool to secure any one secured local agency deposit, and no secured local agency deposit shall be secured by more than one security pool.

# § 16001.5.2. Placement and Acceptance of Securities in Security Pools.

A depository may place, and an agent of depository may accept, only eligible securities (non–REN) in a security pool (non–REN) and only eligible securities (REN) in a security pool (REN).

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

#### HISTORY

Repealer and new section filed 7-16-80; effective thirtieth day thereafter (Register 80, No. 29).

#### § 16001.5.3. Release of Security.

No agent of depository shall release a security held by it for the purpose of securing a secured local agency deposit except in accordance with the provisions of the Local Agency Deposit Security Law and this Chapter.

# § 16001.5.4. Retention of Documents.

An agent of depository shall retain each document relating to an addition of a security, a withdrawal of a security, or a substitution of securities, or a copy thereof, for a period of not less than two years after such addition, withdrawal, or substitution is effected; provided, however, that nothing in this Section shall be deemed to require an agent of depository to retain a security or a copy thereof.

#### § 16001.5.5. Segregation of Securities.

An agent of depository shall segregate securities which it holds for the purpose of securing secured local agency deposits and keep such securities separate and apart from other securities held by it; and whenever an agent of depository holds two or more security pools, such agent of depository shall segregate each security pool and keep each security pool separate and apart from other security pools held by it.

#### § 16001.5.6. Identification of Security Pool.

Whenever a depository maintains more than one security pool with an agent of depository, such depository and such agent of depository shall jointly assign an identification number to each such security pool.

Whenever the Local Agency Deposit Security Law or this Chapter requires an identification of a security pool or that a security pool be identified, there shall be furnished with respect to such security pool (i) the name of the agent of depository which holds such security pool, (ii) in case such security pool is one of two or more security pools maintained by a depository with an agent of depository, the identification number of such security pool, and (iii) in case such security pool is a security pool (REN), a statement to that effect.

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

#### HISTORY

 Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

#### § 16001.5.7. Description of Security.

Whenever the Local Agency Deposit Security Law or this Chapter requires a description of a security or that a security be described, the following information shall be furnished with respect to such security:

- (a) In case the security is a security (non-REN):
- (1) Name of obligor.
- (2) Type (e.g., bond, debenture, note, etc.).
- (3) Date of maturity.
- (4) Interest rate, if any.
- (5) Par value.
- (6) In the case of a security which is a bond, note, certificate of indebtedness, warrant, or other obligation issued by any state of the United States (other than the State of California), the Commonwealth of Puerto Rico, any local agency of such state or Commonwealth, or any department, board, agency, or authority of such state or Commonwealth, the rating of such security and the name of the investment service organization which provided such rating.
  - (b) In case the security is a security (REN):
- (1) Identification or serial number assigned to the security by the depository.
  - (2) Name of obligor.
  - (3) Date of the security.
  - (4) Original principal balance.
  - (5) Unpaid principal balance.

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

#### HISTORY

- 1. New subsection (f) filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

#### § 16001.5.8. Bonds.

#### HISTORY

1. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 16001.5.9. Reports, Statements, and Other Documents.

Whenever the Local Agency Deposit Security Law or this Chapter requires that a report, statement, or other document be filed with, served on, or made available to the Administrator or a treasurer, such report, statement, or other document shall be typewritten or otherwise legibly printed in the English language and shall be in the form, contain the information, and be executed as prescribed in this Chapter, unless the Administrator or treasurer, as the case may be, directs or consents otherwise.

#### HISTORY

- 1. Amendment filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

# § 16001.5.10. Execution of Documents.

- (a) No officer or employee of a depository duly authorized to execute any order of withdrawal or order of substitution required in Subchapter 3 of this Chapter or to execute or verify any statement or agreement relating to securities (REN) required in Subchapter 7 of this Chapter shall be authorized to execute or verify or shall execute or verify any statement of deposits required in Subchapter 3 of this Chapter.
- (b) If a depository is authorized to engage in the trust business in this State and is eligible to act as agent of depository, no officer or employee of the trust department of such depository shall be authorized to execute or shall execute any order, statement, certificate, verification, report, or other document required by the Local Agency Deposit Security Law or this Chapter of a depository or of a duly authorized officer or employee of a depository.
- (c) If an agent of depository is a depository, no officer or employee of such depository other than an officer or employee of the trust department of such depository, shall be authorized to execute or shall execute any order, statement, certificate, verification, report, or other document, re-

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quired by the Local Agency Deposit Security Law or this Chapter of an agent of depository or of a duly authorized officer or employee of an agent of depository.

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

#### HISTORY

1. Amendment of subsection (a) filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# § 16001.5.11. Verification.

Whenever the Local Agency Deposit Security Law or this Chapter requires a verification or that a document be verified, the verification shall be made by affidavit, in which case the certificate of the officer taking the affidavit shall be attached thereto, or by an unsworn statement made in accordance with Code of Civil Procedure Section 2015.5.

#### § 16001.5.12. Service.

Whenever the Local Agency Deposit Security Law or this Chapter requires that a document be served on a person, it may be served either by delivering the document to such person or by depositing the document in the United States mail, addressed to such person with first—class or airmail postage charges prepaid.

#### § 16001.5.13. Uncollected Funds.

For purposes of Government Code Section 53652 and this Chapter, any item (other than cash) deposited with a depositary shall be deemed to be uncollected funds, as follows:

- (a) In case the item is a check or draft which is drawn on, payable at, or payable through an office of a bank located in this State or a warrant drawn by a governmental agency located in this State, for the period to and including the second business day after the day of deposit. (For example, if the item is deposited on Monday, it will be uncollected funds to and including the following Wednesday.)
- (b) In the case of any other item, for the period to and including the fourth business day after the day of deposit. (For example, if the item is deposited on Monday, it will be uncollected funds to and including the following Friday.)

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53652, Government Code.

#### **HISTORY**

1. New section filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

## § 16001.5.14. First Lien.

In determining for purposes of Government Code Section 53651(m) or this Chapter whether a promissory note is secured by a first lien on real property, the items described in Financial Code Section 766, unless an installment or payment thereunder (other than a rental or royalty under a lease) is due and delinquent, shall be disregarded.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

### HISTORY

1. New section filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# § 16001.5.15. Good Faith.

For purposes of this Chapter, for a person to accept or to continue to accept a statement in good faith requires that such person (i) be and continue to be alert to the circumstances surrounding such statement and (ii) if the person has any information which would cause a prudent man not to accept or to continue to accept the statement without inquiry, he has investigated and is satisfied that the statement is truthful.

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5 of the Government Code.

#### HISTORY

1. New section filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# Subchapter 2. Agent of Depository

# Article 1. Eligibility to Act As Agent of Depository

# § 16002.1.1. Eligibility to Act As Agent of Depository—Requirement.

Neither the Federal Home Loan Bank of San Francisco nor any trust company or bank shall act as agent of depository, nor shall any treasurer or any depository name the Federal Home Loan Bank of San Francisco or any trust company or bank to act as agent of depository, nor shall any depository place any security with the Federal Home Loan Bank of San Francisco or any trust company or bank for the purpose of securing a secured local agency deposit, unless the Federal Home Loan Bank of San Francisco or such trust company or bank, as the case may be, is eligible to act as agent of depository.

NOTE: Authority cited: Section 53661, Government Code. Reference: Sections 53657 and 53661, Government Code.

#### HISTORY

1. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29)

# § 16002.1.2. Eligibility to Act As Agent of Depository—Qualifications.

The Federal Home Loan Bank of San Francisco or a trust company or state or national bank located in this State and authorized to engage in the trust business in this State is eligible to act as agent of depository if it has filed with the Administrator an agreement of agent of depository in accordance with Article 2 of this Subchapter and if it is not declared by the Administrator ineligible to act as agent of depository.

NOTE: Authority cited: Section 53661, Government Code. Reference: Sections 53657 and 53661, Government Code.

#### HISTORY

1. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# Article 2. Agreement of Agent of Depository

### § 16002.2.1. Agreement of Agent of Depository—Filing.

- (a) In case the Federal Home Loan Bank of San Francisco intends to act as agent of depository, it shall file with the Administrator an agreement in form satisfactory to the Administrator.
- (b) In case a trust company or state or national bank located in this State and authorized to engage in the trust business in this State intends to act as agent of depository, it shall file with the Administrator an agreement on Form 1. (For an illustration of Form 1, see Section 16010.1.1 of this Chapter.)

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53657, Government Code.

# HISTORY

1. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# § 16002.2.2. Agreement of Agent of Depository—Execution and Acknowledgment.

An agreement of agent of depository shall be executed on behalf of the agent of depository by the duly authorized president or a duly authorized vice president of such agent of depository and by the duly authorized secretary or a duly authorized assistant secretary of such agent of depository (or if there be no secretary or assistant secretary, then in lieu thereof, by a duly authorized officer of such agent of depository who performs duties usually performed by a secretary or assistant secretary). An agreement of agent of depository shall be acknowledged in the manner provided by law for the acknowledgment of an instrument, and the certificate of the

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officer taking the acknowledgment shall be attached to the agreement. An agreement of agent of depository shall bear the corporate seal of such agent of depository.

# Article 3. Declaration of Ineligibility and Transfer Order

# § 16002.3.1. Declaration of Ineligibility and Transfer Order—Issuance.

Whenever the Administrator finds that an agent of depository for any reason has failed to comply with the agreement of agent of depository filed by it in accordance with Article 2 of this Subchapter, or any provision thereof, the Administrator may issue a declaration of ineligibility and transfer order, declaring such agent of depository ineligible to act as agent of depository and ordering such agent of depository, at its own expense and at the time fixed in such order, to transfer each security held by it for the purpose of securing a secured local agency deposit (including any security placed for safekeeping pursuant to Government Code Section 53659 with a bank, a trust company, a federal reserve bank or a branch thereof or the Federal Home Loan Bank of San Francisco) to an agent of depository designated in such order on or before the date specified in such order.

#### HISTORY

- Amendment filed 10-8-76 as an emergency; effective upon filing (Register 76, No. 41).
- 2. Certificate of Compliance filed 2-4-77 (Register 77, No. 6).

# § 16002.3.2. Declaration of Ineligibility and Transfer Order—Form, Execution, and Contents.

A declaration of ineligibility and transfer order shall be in writing, executed by the Administrator, and shall specify in what respects the agent of depository therein declared ineligible failed to comply with the agreement of agent of depository.

# § 16002.3.3. Declaration of Ineligibility and Transfer Order—Service.

- (a) The original or duplicate original of a declaration of ineligibility and transfer order shall be served on the agent of depository therein declared ineligible.
- (b) A copy of a declaration of ineligibility and transfer order shall be served upon each depository for which, according to the latest reports filed with the Administrator, the agent of depository therein declared ineligible holds a security securing a secured local agency deposit, and upon the treasurer of each local agency a deposit of which, according to the latest reports filed with the Administrator, is secured by a security held by the agent of depository therein declared ineligible; provided, however, that any failure to effect service as provided in this Subdivision (b) shall not invalidate any action taken pursuant to this article.

### § 16002.3.4. Transferred Security.

An agent of depository to which a security securing a secured local agency deposit is transferred in accordance with a declaration of ineligibility and transfer order may hold, pool, place for safekeeping, and release or otherwise dispose of such security as agent of depository in accordance with Local Agency Deposit Security Law and this Chapter, provided, however:

- (a) If the treasurer of each local agency a deposit of which is secured by such transferred security enters into an amendment on the deposit contract relating to such deposit, naming another agent of depository, such security shall be transferred to such other agent of depository at the expense of the depository;
- (b) If such declaration of ineligibility and transfer order is revoked and if the treasurer of each local agency a deposit of which is secured by such transferred security has not yet entered into an amendment to the deposit contract relating to such deposit, naming another agent of depository,

then such security shall be transferred back to the agent of depository declared ineligible in such revoked declaration of ineligibility and transfer order at the expense of such agent of depository.

# Article 4. Hearings

# § 16002.4.1. Hearing—Request.

Upon request filed with the Administrator by an agent of depository declared ineligible in a declaration of ineligibility and transfer order, the Administrator shall, and upon request filed with the Administrator by any person interested in such a declaration of ineligibility and transfer order, the Administrator may, initiate a hearing.

## § 16002.4.2. Notice of Hearing—Service.

Notice of a hearing shall be served upon the persons specified in Section 16002.3.3 of this Chapter; provided, however, that any failure to effect service of such notice upon the persons specified in Subdivision (b) of 16002.3.3 of this Chapter shall not invalidate any action taken pursuant to this Article.

# § 16002.4.3. Revocation of Declaration of Ineligibility and Transfer Order.

If upon the hearing the Administrator finds that the agent of depository declared ineligible in the declaration of ineligibility and transfer order has not failed to comply with the agreement of agent of depository filed by it with the Administrator, the Administrator shall, and if upon the hearing the Administrator finds that, although the agent of depository has failed to comply with the agreement of agent of depository, such agent of depository has cured such failure to comply and that it is reasonably probable that such agent of depository will comply with such agreement of agent of depository in the future, the Administrator may, revoke the declaration of ineligibility and transfer order.

# Subchapter 3. Addition, Withdrawal and Substitution of Securities

# Article 1. Addition of a Security

#### § 16003.1.1. Addition of a Security.

A depository may effect an addition of a security to a security pool at any time.

# Article 2. Plus Substitution of Securities

# § 16003.2.1. Plus Substitution of Securities.

A depository may effect a plus substitution of securities at any time; provided, however, that no agent of depository shall release a security from a security pool pursuant to such a substitution unless a duly authorized officer thereof first endorses upon or attaches to the documents of substitution a certification that the market value of the security added to such security pool equals or exceeds the market value of the security withdrawn from such security pool.

# Article 3. Withdrawal of a Security

### § 16003.3.1. Withdrawal of a Security—In General.

No depository shall effect a withdrawal of a security from a security pool unless it first presents to the agent of depository an order of withdrawal and statement of local agency deposits in accordance with this Article.

### § 16003.3.2. Order of Withdrawal—Contents.

An order of withdrawal shall describe each security to be withdrawn and shall state the market value thereof; provided, however, that the description of a security to be withdrawn need not contain the information called for in Paragraph (6) of Subdivision (a) of Section 16001.5.7 of this Chapter.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53654, Government Code.

#### HISTORY

- 1. Amendment filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18)
- 3. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

#### § 16003.3.3. Order of Withdrawal—Execution.

An order of withdrawal shall be executed on behalf of the depository by not less than two duly authorized officers or employees of such depository.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53654, Government Code.

#### HISTORY

1. Amendment of section and new Note filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

## § 16003.3.4. Statement of Local Agency Deposits— Contents.

A statement of local agency deposits shall contain the total of local agency deposits and the total of secured local agency deposits held by the depository as of the most reasonably current date; and in case the depository maintains more than one security pool, the total of local agency deposits and the total of secured local agency deposits held on such date which are secured by the security pool from which the withdrawal is to be made; provided, however, that the totals of secured local agency deposits may be omitted, in which case the totals of secured local agency deposits shall be deemed to be the same as the corresponding totals of local agency deposits for purposes of such statement of deposits. For purposes of this Section, the "most reasonably current date" is the latest date as of which the depository, exercising due diligence, can determine the totals of local agency deposits and the totals of secured local agency deposits held by it; provided, however, that in no event shall such date precede by more than five days the day on which the statement of local agency deposits is presented to the agent of depository.

# § 16003.3.5. Statement of Local Agency Deposits—Execution and Verification.

A statement of local agency deposits shall be executed on behalf of the depository by two or more duly authorized officers of the depository, and each of such officers shall endorse upon or attach to such statement of local agency deposits a verification that such statement of local agency deposits is true and correct.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53654, Government Code.

#### HISTORY

- 1. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29)
- 2. Amendment filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 16003.3.6. Release of Security—Certification.

No agent of depository shall release a security from a security pool pursuant to a withdrawal of a security unless it first receives from the depository an order of withdrawal and statement of local agency deposits in accordance with this Article and a duly authorized officer of such agent of depository endorses upon or attaches to such order and statement a certification that he has read the statement, that he has accepted the statement in good faith, that to the best of his knowledge and belief all the information contained in the statement is true and correct, and that the market value of the securities in the security pool from which the withdrawal is to be made, less the market value of the securities to be withdrawn from such security pool, exceeds, in case such security pool is a security pool (non–REN), by at least 10 percent, or in case such security pool is a security pool (REN), by at least 50 percent, the total of secured local agency deposits secured by such security pool, as stated in the statement.

NOTE: Authority cited: Section 53661, Government Code. Reference: Sections 53649, 53651, 53652, and 53654, Government Code.

#### HISTORY

1. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

## § 16003.3.7. Release of Security—Endorsement of Date.

Whenever an agent of depository releases a security from a security pool pursuant to a withdrawal of a security, a duly authorized officer thereof shall endorse the date of such release upon the order of withdrawal and statement of local agency deposits.

#### § 16003.3.8. Service on Administrator.

Whenever a security is released from a security pool pursuant to a withdrawal of a security, the agent of depository, concurrently with such release, shall serve on the Administrator a true and complete copy of the order of withdrawal and statement of local agency deposits relating to such release, including the certification made in accordance with Section 16003.3.6 of this Chapter and the endorsement made in accordance with Section 16003.3.7 of this Chapter.

#### HISTORY

- 1. Amendment filed 3–2–72 as an emergency; designated effective 3–4–72 (Register 72, No. 10).
- 2. Certificate of Compliance filed 6-9-72 (Register 72, No. 24).

# Article 4. Minus Substitution of Securities

# § 16003.4.1. Minus Substitution of Securities—In General.

No depository shall effect a minus substitution of securities unless it first presents to the agent of depository an order of substitution and statement of local agency deposits in accordance with this Article.

#### § 16003.4.2. Order of Substitution—Contents.

An order of substitution shall describe each security to be withdrawn from, and each security to be added to, the security pool, and shall state the market value thereof; provided, however, that the description of a security to be withdrawn need not contain the information called for in Paragraph (6) of Subdivision (a) of Section 16001.5.7 of this Chapter. NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53654, Government Code.

#### **H**ISTORY

- 1. Amendment filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# § 16003.4.3. Order of Substitution—Execution.

An order of substitution shall be executed on behalf of the depository by not less than two duly authorized officers or employees of such depository.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53654, Government Code.

#### HISTORY

1. Amendment of section and new Note filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# § 16003.4.4. Statement of Local Agency Deposits—Contents, Execution and Verification.

A statement of local agency deposits shall contain the information prescribed in Section 16003.3.4 of this Chapter and shall be executed and verified as prescribed in Section 16003.3.5 of this Chapter.

#### § 16003.4.5. Release of Security—Certification.

No agent of depository shall release a security from a security pool pursuant to a minus substitution of securities unless it first receives from the depository an order of substitution and statement of local agency deposits in accordance with this Article and a duly authorized officer of such agent of depository endorses upon or attaches to such order and statement a certification that he has read the statement, that he has ac-

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cepted the statement in good faith, that to the best of his knowledge and belief all the information contained in the statement is true and correct, and that the market value of the securities in the security pool with respect to which the minus substitution of securities is to be effected, less the market value of the securities to be withdrawn from, and plus the market value of the securities to be added to, such security pool, exceeds, in case such security pool is a security pool (non–REN), by at least 10 percent, or in case such security pool is a security pool (REN), by at least 50 percent, the total of secured local agency deposits secured by such security pool, as stated in the statement.

NOTE: Authority cited: Section 53661, Government Code. Reference: Sections 53649, 53651, 53652, and 53654, Government Code.

#### HISTORY

1. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# § 16003.4.6. Release of Security—Endorsement of Date.

Whenever an agent of depository releases a security from a security pool pursuant to a minus substitution of securities, a duly authorized officer thereof shall endorse the date of such release upon the order of substitution and statement of local agency deposits.

#### § 16003.4.7. Service on Administrator.

Whenever a security is released from a security pool pursuant to a minus substitution of securities, the agent of depository, concurrently with such release, shall serve on the Administrator a true and complete copy of the order of substitution and statement of local agency deposits relating to such release, including the certification made in accordance with Section 16003.4.5 of this Chapter and the endorsement made in accordance with Section 16003.4.6 of this Chapter.

#### HISTORY

- 1. Amendment filed 3–2–72 as an emergency; designated effective 3–4–72 (Register 72, No. 10).
- 2. Certificate of Compliance filed 6-9-72 (Register 72, No. 24).

# Subchapter 4. Reports by Treasurer to Administrator

## Article 1. General Provisions

#### § 16004.1.1. Reports—Execution.

A report required by this Subchapter shall be executed by a treasurer or by a person authorized to act on his behalf, except that the registration report required by Article 2 of this Subchapter shall be executed personally by the treasurer.

# **Article 2. Registration Report**

# § 16004.2.1. Registration Report—Filing.

#### HISTORY

1. Repealer of article 2 (sections 16004.2.1 and 16004.2.2) and section filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

## § 16004.2.2. Registration Report—Form and Contents.

#### HISTOR'

1. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# Article 3. Supplemental Registration Report

# § 16004.3.1. Supplemental Registration Report—Filing.

#### HISTORY

1. Repealer of article 3 (sections 16004.3.1 and 16004.3.2) and section filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# § 16004.3.2. Supplemental Registration Report—Form and Contents.

#### HISTORY

1. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# **Article 4. Termination Report**

#### § 16004.4.1. Termination Report—Filing.

#### HISTORY

1. Repealer of article 4 (sections 16004.4.1 and 16004.4.2) and section filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# § 16004.4.2. Termination Report—Form and Contents.

#### HISTORY

1. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

# Article 5. Report of Deposits

#### § 16004.5.1. Report of Deposits—Filing.

Whenever the Administrator may require, a treasurer shall file a report of deposits with the Administrator on or before the date designated by the Administrator.

# § 16004.5.2. Report of Deposits—Form and Contents.

A report of deposit shall be made on Form 3 and shall contain the information therein called for as of the time specified by the Administrator. (For an illustration of Form 3, see Section 16010.1.3 of this Chapter.)

# Subchapter 5. Reports by Depository and Agent of Depository to Administrator

# Article 1. General Provisions

## § 16005.1.1. Reports—Execution.

- (a) A report required of a depository by this Subchapter shall be executed on behalf of such depository by not less than two duly authorized officers thereof.
- (b) A report required of an agent of depository by this Subchapter shall be executed on behalf of such agent of depository by a duly authorized officer thereof.

#### HISTORY

- 1. New subsection (b) filed 3–2–72 as an emergency; designated effective 3–4–72 (Register 72, No. 10).
- 2. Certificate of Compliance filed 6-9-72 (Register 72, No. 24).

# Article 2. Report of Addition, Withdrawal, or Substitution of Securities

# § 16005.2.1. Report of Addition, Withdrawal, or Substitution of Securities—Service.

Within two business days after a depository effects an addition of a security, a withdrawal of a security, or a substitution of a security, the agent

of depository which holds the security pool with respect to which such addition, withdrawal, or substitution of securities was effected shall serve on the Administrator a report of addition, withdrawal, or substitution of securities.

#### HISTORY

- 1. Amendments filed 3–2–72 as an emergency; designated effective 3–4–72 (Register 72, No. 10).
- 2. Certificate of Compliance filed 6-9-72 (Register 72, No. 24).

# § 16005.2.2. Report of Addition, Withdrawal, or Substitution of Securities—Form and Contents.

A report of addition, withdrawal, or substitution of securities shall be in writing, addressed to the Administrator and clearly designated "report of Addition, Withdrawal, or Substitution of Securities," and shall obtain the following information:

- (a) Name and address of depository which effected the addition, withdrawal, or substitution of securities.
- (b) Identification of the security pool with respect to which the addition, withdrawal, or substitution of securities was effected.
- (c) In the case of an addition of a security, the description and market value of each security added to the security pool, and the date of the addition.
- (d) In the case of a withdrawal of a security, the description and market value of each security withdrawn from the security pool, the date of withdrawal, and the information contained in the statement of local agency deposits presented to the agent of depository by the depository in accordance with Article 3, Subchapter 3 of this Chapter; provided, however, that the description of a security withdrawn need not contain the information called for in Paragraph (6) of Subdivision (a) of Section 16001.5.7 of this Chapter.
- (e) In the case of a plus substitution of securities, the description and market value of each security added to, and of each security withdrawn from, the security pool, and the date of the substitution; provided, however, that the description of a security withdrawn need not contain the information called for in Paragraph (6) of Subdivision (a) of Section 16001.5.7 of this Chapter.
- (f) In the case of a minus substitution of securities, the description and market value of each security added to, and of each security withdrawn from, the security pool, the date of the substitution, and the information contained in the statement of local agency deposits presented to the agent of depository by the depository in accordance with Article 4, Subchapter 3 of this Chapter; provided, however, that the description of a security withdrawn need not contain the information called for in Paragraph (6) Subdivision (a) of Section 16001.5.7 of this Chapter.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53663, Government Code.

### HISTORY

- 1. Amendment of subsections (d), (e) and (f) filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9). For prior history, see Register 72, No. 24.
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

# § 16005.2.3. Report of Addition, Withdrawal or Substitution of Securities—Alternative Forms.

Notwithstanding the provisions of Section 16005.2.2 of this Chapter: (a) In the case of a withdrawal of a security, the report required by this Article may consist of the copy of the order of withdrawal and statement of local agency deposits which is served on the Administrator in compliance with Section 16003.3.8 of this Chapter, provided that there is endorsed upon or attached to such copy a transmittal, addressed to the Administrator, clearly designated "Report of Addition, Withdrawal, or Substitution of Securities," and executed in accordance with Section 16005.1.1 of this Chapter.

(b) In the case of minus substitution of securities, the report required by this Article may consist of the copy of the order of substitution and

statement of local agency deposits which is served on the Administrator in compliance with Section 16003.4.7 of this Chapter, provided that there is endorsed upon or attached to such copy a transmittal, addressed to the Administrator, clearly designated "Report of Addition, Withdrawal, or Substitution of Securities," and executed in accordance with Section 16005.1.1 of this Chapter.

# Article 3. Weekly Report of Local Agency Deposits

# § 16005.3.1. Weekly Report of Local Agency Deposits—Filing.

Each depository shall file with the Administrator a weekly report of local agency deposits; such weekly report of local agency deposits shall be as of the close of business on Wednesday of each week and shall be filed with the Administrator within five business days of such Wednesday.

#### HISTORY

- 1. Amendment filed 3–2–72 as an emergency; designated effective 3–4–72 (Register 72, No. 10).
- 2. Certificate of Compliance filed 6-9-72 (Register 72, No. 24).
- 3. Amendment filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 4. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

# § 16005.3.2. Weekly Report of Local Agency Deposits—Form and Contents.

A weekly report of local agency deposits shall be in writing, addressed to the Administrator and clearly designated "Weekly Report of Local Agency Deposits," and shall contain the following information as of the close of business on Wednesday of each week:

- (a) Name and address of depository.
- (b) Identification of security pool maintained by the depository.
- (c) Total of local agency deposits and total of local secured local agency deposits held by the depository, and in case the depository maintains more than one security pool, the total of local agency deposits and the total of secured local agency deposits which are secured by each of such security pools; provided, that the totals of secured local agency deposits may be omitted, in which case the totals of secured local agency deposits shall be deemed to be the same as the corresponding totals of local agency deposits.

### HISTORY

- 1. Amendment filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

# Article 4. Called Report of Local Agency Deposits and Securities

# § 16005.4.1. Called Report of Local Agency Deposits and Securities—Filing.

A depository shall file a called report of local agency deposits and securities with the Administrator within twenty business days after the Administrator calls for such called report of local agency deposits and securities.

#### HISTORY

- 1. Amendment filed 3–2–72 as an emergency; designated effective 3–4–72 (Register 72, No. 10).
- 2. Certificate of Compliance filed 6-9-72 (Register 72, No. 24).

# § 16005.4.2. Called Report of Local Agency Deposits and Securities—Form and Contents.

A called report of local agency deposits and securities shall be in writing, addressed to the Administrator and clearly designated "Called Report of Local Agency Deposits and Securities," and shall contain the following information as of the time specified by the Administrator:

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- (a) Name and address of depository.
- (b) With respect to local agency deposits:
- (1) Name of each local agency.
- (2) Type of each deposit (i.e., whether active or inactive.)
- (3) Amount of each deposit.
- (4) Amount of each deposit required to be secured.
- (5) Identification of security pool by which each deposit is secured.
- (6) Total of items (3) and (4), respectively, for each local agency.
- (7) Total of items (3) and (4), respectively, for each security pool.
- (8) Total of items (3) and (4), respectively, held by depository; provided, however, that item (4) and any of the totals of item (4) required in this Subdivision (b) may be omitted, in which case item (4) and any of the totals of item (4) so omitted shall be deemed to be the same as item (3) and the corresponding totals of item (3) for purposes of the report.
  - (c) With respect to each security pool maintained by the depository:
  - (1) Identification of the security pool.
  - (2) Description of each security in the security pool.
- (3) Name and address of bank or trust company where each such security is located.
  - (4) Market value of each such security.
  - (5) Total market value of all such securities.

## § 16005.4.3. Called Report of Local Agency Deposits and Securities—Verification.

A duly authorized officer of each agency of depository with which a depository maintains a security pool shall endorse upon the called report of local agency deposits and securities of such depository or attach thereto a verification that the information in such report with respect to each security pool which such depository maintains with such agency of depository is true and correct.

## § 16005.4.4. Called Report of Local Agency Deposits and Securities—Certification.

A duly authorized officer of each agent of depository with which a depository maintains a security pool shall endorse upon the called report of local agency deposit and securities of such depository or attach thereto a certification that, as of the time specified by the Administrator, the total market value of all securities in the security pool exceeded, in case such security pool is a security pool (non-REN), by at least 10 percent, or in case such security pool is a security pool (REN), by at least 50 percent, the total of the secured local agency deposits secured by such security pool, as reported by the depository, or if, as of the time specified by the Administrator, the total market value of all securities in the security pool did not exceed by at least 10 percent or 50 percent, as the case may be, the total of the secured local agency deposits secured by such security pool, as reported by the depository, a certification to such effect, specifying the difference, as of the time specified by the Administrator, between the total market value of all securities in the security pool and 110 percent or 150 percent, as the case may be, of the total of the secured local agency deposits secured by such security pool, as reported by the depository. NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2 (commencing with Section 53630), Chapter 4, Part 1, Division 2, Title 5, Government Code as amended by Stats. 1972, Chap. 756.

#### HISTORY

- 1. New section filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

## Subchapter 6. Report by Agent of Depository to Treasurer

#### **Article 1. General Provisions**

#### § 16006.1.1. Report—Requirement.

An agent of depository shall make available to the treasurer of a local agency for review by such treasurer at a mutually agreed upon time and location a report with respect to each security pool held by such agent of depository for the purpose of securing a secured local agency deposit of such local agency.

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2 (commencing with Section 53630), Chapter 4, Part 1, Division 2, Title 5, Government Code, as amended by Stats. 1972, Chap. 756.

#### HISTORY

- 1. Repealer of Subchapter 6 (Sections 16006.1.1, 16006.1.2, 16006.2.1 through 16006.2.5, 16006.3.1 through 16006.3.3) and new Subchapter 6 (Sections 16006.1.1, 16006.1.2, 16006.2.1, 16006.2.2) filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

#### § 16006.1.2. Definition.

In this Subchapter, "most recent called time" means the time as of which information is provided in the called report of local agency deposits and securities relating to the security pool most recently filed with the Administrator in accordance with Article 4, Subchapter 5 of this Chapter.

## Article 2. Report by Agent of Depository to Treasurer

#### § 16006.2.1. Report—Form and Contents.

The report required by this Subchapter shall be in writing, shall identify the security pool to which it relates, and shall contain the following:

- (a) The information called for in Subdivision (c) of Section 16005.4.2 of this Chapter, as of the most recent called time. Such information shall be certified to be true and correct by a duly authorized officer of the agent of depository.
- (b) The total of the secured local agency deposits secured by the security pool, as of the most recent called time, as reported by the depository.
- (c) A certification that, as of the most recent called time, the total market value of all securities in the security pool exceeded, in case such security pool is a security pool (non–REN), by at least 10 percent, or in case such security pool is a security pool (REN), by at least 50 percent, the total of the secured local agency deposits secured by such security pool, as reported by the depository, or if, as of the most recent called time, the total market value of all securities in the security pool did not exceed by at least 10 percent or 50 percent, as the case may be, the total of the secured local agency deposits secured by such security pool, as reported by the depository, a certification to such effect, specifying the difference, as of the most recent called time, between the total market value of all securities in the security pool and 110 percent or 150 percent, as the case may be, of the total of the secured local agency deposits secured by such security pool, as reported by the depository.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53660, Government Code.

#### HISTORY

1. Amendment of subsection (c) filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

#### § 16006.2.2. Report—Form and Contents—Alternative.

Notwithstanding the provisions of Section 16006.2.1 of this Chapter, the report required by this Subchapter may consist of a true and complete copy of the called report of local agency deposits and securities relating to the security pool most recently filed with the Administrator in accordance with Article 4, Subchapter 5 of this Chapter; provided that such copy is executed on behalf of the depository by not less than two duly authorized officers thereof and provided, further, that there is endorsed upon or attached to such copy the verification called for in Section 16005.4.3 of this Chapter and the certification called for in Section 16005.4.4 of this Chapter.

#### Subchapter 7. Security Pools (REN)

#### Article 1. General Provisions

#### § 16007.1.1. Definitions.

In this Subchapter, "deed of trust" includes a mortgage, and terms relating to deeds of trust include the closest equivalent terms relating to mortgages.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code and Chapter 20, Statutes of 1976.

#### HISTORY

1. Repealer of Subchapter 7 (Article 1, Sections 16007.1.1–16007.1.2) and new Subchapter 7 (Article 1, Sections 16007.1.1–16007.1.10) filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29). For prior history, see Registers 73, No. 18 and 73, No. 9.

#### § 16007.1.2. Construction.

The provisions of this Subchapter relating to securities (REN) and security pools (REN) are in addition to, and are not to be construed as replacing or limiting, provisions of other subchapters of this Chapter relating to securities and security pools. For example, in case a depository effects a minus substitution of securities (REN), such depository and the agent of depository shall comply not only with the provisions of Sections 16007.1.4 and 16007.1.5 of this Chapter but also with the provisions of Article 4 of Subchapter 4 of this Chapter.

NOTE: Authority cited: Section 53661, Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

#### § 16007.1.3. Local Agencies.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

#### HISTORY

1. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 16007.1.4. Placing Security (REN) in Security Pool (REN).

Whenever a depository places a security (REN) in a security pool (REN) with an agent of depository, such depository shall deliver to such agent of depository each of the following:

- (a) The security and, in case the depository is not the payee named in the security, appropriate endorsements or other documentation showing that the depository owns the security.
- (b) Endorsement or assignment of the security to the agent of depository.
  - (c) (1) The deed of trust by which the security is secured;
- (2) In case the depository is not the beneficiary named in the deed of trust, appropriate endorsements or other documentation showing that the depository holds the beneficial interest under the deed of trust; and
- (3) Appropriate endorsements or other documentation showing that the depository's beneficial interest under the deed of trust has been recorded.
- (d) Assignment, in recordable form, of the depository's beneficial interest under the deed of trust to the agent of depository.
  - (e) (1) Statement stating the following:
  - (A) That the security is an eligible security (REN).

- (B) That the depository's first lien on the real property which secures the security is insured under a title insurance policy which was issued on or after the date of the security by a title insurer admitted to transact the business of title insurance in this State, which was written on the then current standard form of the American Land Title Association Loan Policy or the California Land Title Association Loan Policy, and which is in an amount not less than the unpaid principal balance of the security.
- (C) That, except in a case where the security is insured or guaranteed by the United States or by an agency of the United States, the depository has the report of the appraisal on the real property which is required under Subparagraph (A) of Paragraph (3) of Subdivision (j) of Section 16001.2.1 of this Chapter.
- (D) That the real property is covered by hazard insurance complying with the requirements set forth in Section 3.203 of the Federal Home Loan Mortgage Corporation's Sellers' Guide Conventional Mortgages, as then in effect.
  - (E) The unpaid principal balance of the security.
- (2) The statement called for in Paragraph (1) of this Subdivision (e) shall be executed on behalf of the depository by two or more duly authorized officers of the depository, and each of such officers shall endorse upon or attach to such statement a verification that the statement is true and correct.
- (f) (1) Agreement that, in consideration of the agent of depository's accepting the security in the security pool, the depository shall, if, as, and when ordered by the Administrator, furnish to the agent of depository or to the Administrator additional information and documentation relating to the security.
- (2) The agreement called for in Paragraph (1) of this Subdivision (f) shall be executed on behalf of the depository by two or more duly authorized officers of the depository. Such agreement may be combined in the same document with the statement called for in Subdivision (e) of this Section, and both the agreement and the statement, as so combined, may be executed as a single document.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

#### HISTORY

 Amendment of subsections (e)(2) and (f)(2) filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

## § 16007.1.5. Accepting Security (REN) in Security Pool (REN).

No agent of depository shall accept a security (REN) in a security pool (REN) unless it first receives from the depository the documents called for in Section 16007.1.4 of this Chapter and a duly authorized officer of such agent of depository endorses upon or attaches to the statement called for in Subdivision (e) of Section 16007.1.4 of this Chapter a certification that he has read the statement, that he has accepted the statement in good faith, and that to the best of his knowledge and belief all the information contained in the statement is true and correct.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

#### § 16007.1.6. Recording.

An agent of depository which holds a security (REN) in a security pool (REN) shall, if, as, and when ordered by the Administrator, record the assignment called for in Subdivision (d) of Section 16007.1.4 of this Chapter with respect to such security (REN).

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

#### § 16007.1.7. Additional Information and Documentation.

A depository which maintains a security (REN) in a security pool (REN) with an agent of depository shall, if, as, and when ordered by the Administrator, furnish to such agent of depository or to the Administrator information and documentation relating to such security (REN) in addition to the information and documentation called for in Section 16007.1.4 of this Chapter.

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NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

## § 16007.1.8. Quarterly Statement of Depository to Agent of Depository.

- (a) (1) Whenever the Administrator calls for a called report of local agency deposits and securities, a depository which maintains a security pool (REN) with an agent of depository shall deliver to such agent of depository a statement containing the following information as of the time specified by the Administrator for information in such called report:
  - (A) Identification of the security pool.
  - (B) Description of each security in the security pool.
- (C) Statement that each security in the security pool constitutes an eligible security (REN).
- (2) The statement called for in Paragraph (1) of this Subdivision (a) shall be executed on behalf of the depository by two or more duly authorized officers of the depository, and each of such officers shall endorse upon or attach to a statement verification that he statement is t and correct.
- (b) No agent of depository which holds a security pool (REN) shall make with respect to such security pool the verification called for in Section 16005.4.3 of this Chapter or the certification called for in Section 16005.4.4 of this Chapter unless it first receives from the depository the statement called for in Subdivision (a) of this Section and a duly authorized officer of such agent of depository endorses upon or attaches to such statement a certification that he has read the statement, that he has accepted the statement in good faith, and that to the best of his knowledge and belief all the information contained in the statement is true and correct.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53661, Government Code.

#### HISTORY

1. Repealer of subsections (a)(1)(D)–(F) and amendment of subsection (a)(2) and Note filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

## § 16007.1.9. Notification Regarding Ineligible Security (REN).

Whenever a security (REN) in a security pool (REN) which a depository maintains with an agent of depository ceases for any reason to be an eligible security (REN), such depository shall, within 10 business days, serve on such agent of depository a written notice to such effect and remove such security (REN) from such security pool by effecting a withdrawal of the security or, if required by the provisions of Government Code Section 53651(m)(1), a substitution of securities.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

#### § 16007.1.10. Reliance by Agent of Depository.

So long as an agent of depository which holds a security pool (REN) accepts and continues to accept in good faith from the depository the statements called for in Subdivision (e) of Section 16007.1.4 and Subdivision (a) of Section 16007.1.8 of this Chapter, such agent of depository may rely upon such statements in determining for purposes of the Local Agency Deposit Security Law and this Chapter the eligibility as an eligible security (REN) and the market value of any security (REN) covered by the statements.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53651, Government Code.

#### Subchapter 8. Nonqualification of Security

#### Article 1. Order to Substitute for Nonqualified Security

## § 16008.1.1. Order to Substitute for Nonqualified Security—Issuance.

Whenever the Administrator determines that a security held by an agent of depository for the purpose of securing a secured local agency deposit in a depository is not qualified to secure a secured local agency deposit, the Administrator shall issue to such depository an order to substitute for nonqualified security.

#### HISTORY

- 1. Repealer of former Article 1 (Sections 16008.1.1 through 16008.1.4, renumbering of Article 2 to Article 1 and renumbering of Section 16008.2.1 to 16008.1.1 filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

## § 16008.1.2. Order to Substitute for Nonqualified Security—Form, Execution, and Contents.

An order to substitute for nonqualified security shall be in writing, addressed to the depository and executed by the Administrator, and shall contain the following:

- (a) Description of security which the Administrator has determined is not qualified to secure a secured local agency deposit; provided, however, that such description need not contain the information called for in Paragraph (6) Subdivision (a) of Section 16001.5.7 of this Chapter.
- (b) Statement of reasons why the Administrator has determined that such security is not qualified to secure a secured local agency deposit.
  - (c) Identification of security pool in which such security is held.
- (d) Order to effect a plus substitution of securities with respect to such security or to show in accordance with Section 16008.1.7 of this Chapter that such substitution is not necessary, on or before the date specified in such order.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53661, Government Code.

#### HISTORY

- 1. Renumbering from Section 16008.2.2 and amendment of subsections (a) and (d) filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9)
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Amendment of subsection (a) filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

## § 16008.1.3. Order to Substitute for Nonqualified Security—Service.

An order to substitute for nonqualified security shall be served on the depository to which it is issued.

#### HISTORY

- Renumbering from Section 16008.2.3 filed 3-1-73 as an emergency; designated effective 3-7-73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

#### § 16008.1.4. Hearing—Request.

Upon request filed with the Administrator by a depository to which an order to substitute for nonqualified security is issued, the Administrator shall, and upon request filed with the Administrator by any other person interested in such order, the Administrator may, initiate a hearing.

#### HISTORY

1. Renumbering from Section 16008.2.4 filed 3-1-73 as an emergency; designated effective 3-7-73 (Register 73, No. 9).

2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

#### § 16008.1.5. Notice of Hearing—Service.

Notice of hearing shall be served on the depository to which the order to substitute for nonqualified security was issued and on any other person who has filed a request for such hearing with the Administrator.

#### History

- 1. Renumbering from Section 16008.2.5 filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

## § 16008.1.6. Revocation of Order to Substitute for Nonqualified Security.

If upon the hearing the Administrator determines that the security described in the order to substitute for nonqualified security is qualified to secure a secured local agency deposit, the Administrator shall revoke such order to substitute for nonqualified security.

#### History

- 1. Renumbering from Section 16008.2.6 filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).

## § 16008.1.7. Order to Substitute for Nonqualified Security—Showing by Depository.

A depository to which an order to substitute nonqualified security is issued may show that the plus substitution of securities ordered in such order is not necessary by showing that the total market value of the securities in the security pool in which the security described in the order to substitute for nonqualified security is held, less the market value of such security, exceeds, in case such security pool is a security pool (non-REN), by not less than 10 percent, or in case such security pool is a security pool (REN), by not less than 50 percent, the total of secured local agency deposits secured by such security pool. A depository shall make such showing by filing with the Administrator a statement of local agency deposits, containing the information prescribed in Section 16003.3.4 of this Chapter and executed and verified as prescribed in Section 16003.3.5 of this Chapter, and a report with respect to the security pool in which the security described in the order to substitute for nonqualified security is held, containing the information prescribed in Subdivision (c) of Section 16005.4.2 of this Chapter, executed as prescribed in Section 16005.1.1 of this Chapter, together with the verification prescribed in Section 16005.4.3 of this Chapter and the certification prescribed in Section 16005.4.4 of this Chapter.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53661, Government Code.

#### HISTORY

- Renumbering from Section 16008.2.7 and amendment filed 3-1-73 as an emergency; designated effective 3-7-73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

### § 16008.1.8. Order to Substitute for Nonqualified Security—Failure of Depository to Comply.

#### HISTORY

- 1. Renumbering from Section 16008.2.8 and amendment filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

## § 16008.1.9. Order to Substitute for Nonqualified Security—Notice of Failure of Depository to Comply.

Whenever a depository to which an order to substitute for nonqualified security has been issued fails to comply with such order, the Administrator shall promptly serve notice of such failure to comply on each treasurer who, according to the latest reports filed with the Administrator, maintains a secured local agency deposit with such depository, and on the appropriate regulatory agencies, as follows:

- (a) If the depository is a national bank, on the Comptroller of the Currency of the United States.
- (b) If the depository is a state bank, on the Commissioner of Financial Institutions.
- (c) If the depository is a federal association, on the Office of Thrift Supervision.
- (d) If the depository is a savings association, on Commissioner of Financial Institutions.
- (e) If the depository is a federal credit union, on the National Credit Union Administration.
- (f) If the depository is a state credit union or a federally insured industrial loan company, on the Commissioner of Financial Institutions.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53661, Government Code.

#### HISTORY

- 1. Renumbering from Section 16008.2.9 filed 3–1–73 as an emergency; designated effective 3–7–73 (Register 73, No. 9).
- 2. Certificate of Compliance filed 5-2-73 (Register 73, No. 18).
- 3. Amendment filed 10–8–76 as an emergency; effective upon filing (Register 76, No. 41).
- 4. Certificate of Compliance filed 2-4-77 (Register 77, No. 6).
- 5. Amendment of section and new Note filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
- 6. Change without regulatory effect amending section filed 8–19–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

#### Subchapter 9. Default of Depository

#### Article 1. General Provisions

#### § 16009.1.1. Definitions.

In this Subchapter:

- (a) "Default of depository" means a failure by a depository to pay all or part of a secured local agency deposit in accordance with the deposit contract and on demand of the treasurer or other authorized official of such local agency.
- (b) "Holiday" means any of the holidays provided for in Government Code Sections 6700 and 6701.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53661, Government Code.

#### **HISTORY**

1. Amendment of subsection (b), repealer of subsection (c) and new Note filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### Article 2. Demand for Payment

#### § 16009.2.1. Demand for Payment—Requirement.

No treasurer shall file with the Administrator a notice of default of depository with respect to a local agency deposit unless such treasurer or other authorized official of such local agency has first presented to such depository a demand for payment of such deposit in accordance with the deposit contract and this Article and the depository has failed to comply with such demand for payment.

#### § 16009.2.2. Demand for Payment—Form and Content.

Unless the deposit contract provides otherwise, a demand for payment shall be in writing, addressed to the depository, and shall contain the following:

- (a) Name of local agency.
- (b) Address of office of depository where the local agency deposit is maintained.
- (c) Account number, if any, assigned to the deposit by the depository.
- (d) Demand for payment on account of the deposit.
- (e) Amount demanded to be paid.
- (f) Notice that, if the depository fails to comply with the demand, the treasurer will file a notice of default with the Administrator.

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#### § 16009.2.3. Demand for Payment—Execution.

Unless the deposit contract provides otherwise, a demand for payment shall be executed by the treasurer or other authorized official of the local agency.

#### § 16009.2.4. Demand for Payment—Time of Payment.

Unless the deposit contract provides otherwise, a demand for payment shall be deemed to demand payment on the date such demand is presented to the depository or on the date, if any, specified therein, whichever is later.

## § 16009.2.5. Demand for Payment—Presentment to Depository.

Unless the deposit contract provides otherwise:

- (a) A demand for payment shall be deemed to be presented to a depository when delivered to any officer or employee of such depository at the office of such depository where the local agency deposit is maintained; provided, however, that if such delivery occurs after the close of business hours of such office, then such demand for payment shall be deemed to be presented to the depository on the next succeeding day which is not a holiday.
- (b) A demand for payment, if delivered to any officer or employee of a depository at any office of such depository other than the office where the local agency deposit is maintained, shall be deemed to be presented to such depository on the next succeeding day which is not a holiday.

#### Article 3. Notice of Default of Depository

#### § 16009.3.1. Notice of Default of Depository—Requirement.

In the event of any default of a depository, the treasurer of the local agency shall file with the Administrator a notice of default of depository in accordance with this Article.

## § 16009.3.2. Notice of Default of Depository—Form and Contents.

A notice of default of depository shall be in writing, in duplicate, addressed to the Administrator and clearly designated "Notice of Default of Depository," and shall contain the following information:

- (a) Name of treasurer of local agency.
- (b) Title of treasurer of local agency.
- (c) Name of local agency.
- (d) Name of depository and address of office of depository where the local agency deposit is maintained.
  - (e) Account number, if any, assigned to the deposit by depository.
  - (f) Type of deposit (i.e., active or inactive).
  - (g) Copy of deposit contract.
- (h) Copy of last receipt, certificate of deposit, or other evidence of the local agency deposit taken by the treasurer pursuant to Government Code Section 53641 with respect to the deposit.
  - (i) Total of the deposit.
  - (j) Amount of the deposit which is required to be secured.
  - (k) Amount demanded from the depository on account of the deposit.
- (1) Statement of facts showing that a demand for payment was presented to the depository and the time of such presentment.
- (m) Statement of facts showing that the depository has failed to comply with the demand for payment.
  - (n) Copy of demand for payment.
  - (o) Identification of security pool by which the deposit is secured.

#### § 16009.3.3. Notice of Default of Depository—Execution.

A notice of default of depository shall be executed by the treasurer or by a person authorized to act on his behalf.

## § 16009.3.4. Notice of Default of Depository—Service of Copy.

Whenever a treasurer files a notice of default of depository with the Administrator, such treasurer shall serve one copy each thereof on the de-

pository and on the agent of depository named therein; provided, however, that any failure to effect such service shall not invalidate any action taken pursuant to this Article.

## Article 4. Conversion and Payment Instruction

## § 16009.4.1. Conversion and Payment Instruction—Issuance.

Whenever a notice of default of depository is filed with the Administrator, he shall issue a conversion and payment instruction to the agent of depository named in such notice of default of depository.

## § 16009.4.2. Conversion and Payment Instruction—Form, Execution, and Contents.

A conversion and payment instruction shall be in writing, addressed to the agent of depository and executed by the Administrator, and shall contain the following:

- (a) A copy of the notice of default of depository.
- (b) Instructions forthwith to convert into money such portion of the security pool securing the local agency deposit identified in the notice of default of depository as may be necessary to produce an amount equal to either the amount demanded on account of the local agency deposit or the amount of such local agency deposit which is required to be secured, as stated in the notice of default of depository, whichever is less, and to pay such amount to the treasurer.

## § 16009.4.3. Conversion and Payment Instruction—Service.

A conversion and payment instruction shall be served on the agent of depository to which it is addressed, and one copy each thereof shall be served on the depository and on the treasurer referred to therein.

### § 16009.4.4. Conversion and Payment Instruction—Order of Sale

Whenever an agent of depository sells securities in a security pool (non-REN) in accordance with a conversion and payment instruction, such agent of depository shall sell such securities in the order of dates of maturity, commencing with the security bearing the earliest date of maturity.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53665, Government Code.

#### HISTORY

1. Amendment filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).

#### § 16009.4.5. Payment by Agent of Depository—Receipt.

Whenever an agent of depository makes payment to a treasurer in accordance with a conversion and payment instruction, such agent of depository shall obtain from such treasurer a receipt in quadruplicate for such payment, executed by the treasurer or by a person authorized to act on his behalf. The agent of depository shall retain the original of such receipt, serve one copy each thereof on the depository, the treasurer, and the Administrator.

#### Article 5. Order Not to Release Security

#### § 16009.5.1. Order Not to Release Security—Issuance.

The Administrator may order an agent of depository which holds a security for the purpose of securing a secured local agency deposit in a depository not to release any such security whenever:

(a) In case such depository is a state bank, the Superintendent of Banks of the State of California takes possession of the business and property of, or appoints a conservator of, such depository.

- (b) In case such depository is a national bank, the Comptroller of the Currency of the United States appoints a receiver or a conservator for such depository.
- (c) In case such depository is a state savings and loan association, the Savings and Loan Commissioner of the State of California takes possession of the property, business, and assets of, or appoints a conservator of, such depository.
- (d) In case such depository is a federal savings and loan association, the Federal Home Loan Bank Board appoints a receiver or conservator for such depository.

#### HISTORY

- 1. Amendment filed 10-8-76 as an emergency; effective upon filing (Register 76, No. 41).
- 2. Certificate of Compliance filed 2-4-77 (Register 77, No. 6).

## § 16009.5.2. Order Not to Release Security—Form and Execution.

An order not to release security may be issued in writing, executed by the Administrator, or orally, in which case the order shall be promptly confirmed in writing, executed by the Administrator.

#### § 16009.5.3. Order Not to Release Security—Service.

- (a) An order not to release security, if issued in writing, shall be served on the agent of depository, and copies thereof shall be served on the depository and on each treasurer, who, according to the latest reports filed with the Administrator, has a local agency deposit in such depository; provided, however, that any failure to effect service on any such treasurer shall not invalidate any action taken pursuant to this Article.
- (b) An order not to release security, if issued orally, shall be communicated to the agent of depository either in person or by telephone. The writing confirming such order shall be served in the manner provided in Subdivision (a) of this Section for the service of an order not to release security issued in writing; provided, however, that any failure to effect service on any treasurer shall not invalidate any action take pursuant to this Article.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53661, Government Code.

#### HISTORY

1. Amendment of subsection (a) and new Note filed 4-7-97; operative 4-7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### Subchapter 10. Forms

#### Article 1. Forms

#### § 16010.1.1. Form 1. (Agreement of Agent of Depository.)

The following is an illustration of Form 1:

#### 

(hereinafter referred to as "Bank") with the Administrator of Local Agency Security of the State of California.

#### RECITALS

A. In this agreement:

- 1. "Local Agency Deposit Security Regulations" means Chapter 2, Division 4, Title 2 of the California Administrative Code, as effective July 1, 1970, and as the same or any provision thereof may be amended, added, or repealed.
- 2. Terms defined in the Local Agency Deposit Security Regulations shall have the meanings therein set forth.
- 3. Words in the singular number include the plural, and in the plural include the singular.
- 4. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

- B. Bank is authorized to engage in the trust business in the State of California.
  - C. Bank intends to act as agent of Depository.

NOW, THEREFORE, Bank agrees as follows:

- 1. Bank shall comply in all respects with the provisions of the Local Agency Deposit Security Law and the Local Agency Deposit Security Regulations.
- 2. Without prejudice to or limiting the provisions of the foregoing paragraph, Bank shall:
- (a) File with the Administrator such reports and other documents as may be required by the Local Agency Deposit Security Law, by the Local Agency Deposit Security Regulations, or by the Administrator pursuant to such Law or Regulation.
- (b) Accept, hold, pool, place for safekeeping, and release or otherwise dispose of each security which may be placed with it by a depository for the purpose of securing a secured local agency deposit in such manner as may be prescribed by the Local Agency Deposit Security Law, by the Local Agency Deposit Security Regulations, or by the Administrator pursuant to such Law or Regulations.
- (c) Comply with any instruction or order which may be issued by the Administrator pursuant to the Local Agency Deposit Security Law or the Local Agency Deposit Security Regulations.
- (d) Permit the Administrator, at such times as the Administrator may deem necessary, to verify securities which Bank holds for the purpose of securing a secured local agency deposit; and exhibit to the Administrator and permit him to inspect and copy such books, records, accounts, securities, and other documents in its custody or under its control which pertain to securities which Bank holds for the purpose of securing a secured local agency deposit.
- 3. No waiver by the Administrator of any failure of Bank to comply with this agreement or any provision thereof shall be deemed a waiver of any failure to comply thereafter occurring.

IN WITNESS WHEREOF Bank has caused this agreement to be executed by its duly authorized officers as of the date first above written and filed with the Administrator.

	(name)	
By	(name)	
Бу	(signature)	
Its	(name of signatory)	
113	(title of signatory)	
Ву		
	(signature)	
	(name of signatory)	
Its		
	(title of signatory)	

#### § 16010.1.2. Form 2. (Registration Report.)

#### HISTORY

- 1. Amendment file 11–10–71 as procedural and organizational; designated effective 11–22–71 (Register 71, No. 46).
- 2. Amendment filed 7–22–75 as procedural and organizational; designated effective 7–23–75 (Register 75, No. 30).
- 3. Repealer filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

#### § 16010.1.3. Form 3. (Report of Deposits.)

(a)	The follo	owing	is an	illustration	of Page	1	of Form	3:

TO:	Administrator of Local Agency Se	curity
	111 Pine Street, Suite 1100	
	San Francisco, CA 94111-5613	
ED 014		

FROM:	Sun Francisco, CA 94111 3013				
1101.1.	(Name of Treasurer)				

(Title o	of Treasurer)		
(Name of SUBJECT: Report of In The following Report of with Article 5, Subchapter alations.	Inactive Deposits of the Local Ager		
		(Signatu	re)
REPORT OF INACTIVE I	DEPOSITS OF		and Title)
	(Na	me of Local A	gency)
OF(Date) (1) Name of Depository and Location of Office	(2) Account No.	(3) Treasurer's Balance	(4) Secured Balance
<ol> <li>(1) List depositories alphabetic</li> <li>(2) Give the account number, if tory.</li> <li>(3) Give the balance as it appe</li> <li>(4) Give the balance that must</li> </ol>	ars on the treasurer	inactive deposit b	

illustration of the	continuation pag	ge of Form
	_	
(2)	(3)	(4)
	Treasurer's	Secured
Account No.	Balance	Balance
	(2)	Treasurer's

- (1) List depositories alphabetically. Use a separate line for each deposit.
- (2) Give the account number, if any, assigned to the inactive deposit by the depository.
- (3) Give the balance as it appears on the treasurer's records.
- (4) Give the balance that must be secured in accordance with law.

NOTE: Authority cited: Section 53661, Government Code. Reference: Section 53661, Government Code.

#### HISTORY

- 1. Amendment of subsection (a) filed 11–10–71 as procedural and organizational; designated effective 11–22–71 (Register 71, No. 46).
- 2. Amendment of subsection (a) filed 7–22–75 as procedural and organizational; designated effective 7–23–75 (Register 75, No. 30).
- 3. Amendment filed 10–8–76 as an emergency; effective upon filing (Register 76, No. 41).
- 4. Certificate of Compliance filed 2-4-77 (Register 77, No. 6).
- 5. Repealer and new section filed 7–16–80; effective thirtieth day thereafter (Register 80, No. 29).
- 6. Amendment of subsection (a) address filed 4–7–97; operative 4–7–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

\* \* \*

Barclays Official

## CALIFORNIA CODE OF REGULATIONS

## Title 2. Administration

Division 5. Local Agency Personnel Standards

**Vol. 3** 



### **Division 5.** Local Agency Personnel Standards

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## Division 5. Local Agency Personnel Standards

## Chapter 1. Approved Local Merit System Standards

#### Article 1. Purposes

#### § 17010. Purposes.

These Standards are adopted by the State Personnel Board to implement Government Code Sections 19800–19810 which require establishment of personnel standards in regulatory form necessary "to assure state conformity with applicable federal requirements". These standards are intended to be used as broad, flexible guidelines reflecting generally accepted personnel practices. The State Personnel Board Executive Officer will provide necessary interpretations of the standards.

They provide for meeting the federal and state requirements by local agencies and are applicable to both Approved Local Merit Systems and the Interagency Merit System directly administered by the State Personnel Board. These standards must be met by a local agency wishing to establish its own Approved Local Merit System in order to qualify for certain state and federally funded programs. In Approved Local Merit Systems, the State Personnel Board Executive Officer will review each system for sufficient conformity with applicable Federal requirements. If sufficient conformity is found, the approval will be continued.

The departments administering state and federally funded programs in local agencies which have not met the criteria for Approved Local Merit System status constitute the Interagency Merit System directly administered by the State Personnel Board.

NOTE: Authority cited: Sections 19800 and 19801, Government Code. Reference: Sections 19800–19810, Government Code.

#### HISTORY

- 1. Repealer of Chapter 1 (Sections 17010–17380, not consecutive) and new Chapter 1 (Sections 17010–17100, not consecutive) filed 1–21–77; effective thirtieth day thereafter (Register 77, No. 4). For prior history see Register 72, No. 20.
- Repealer of Chapter 1 (Articles 1–7, Sections 17010–17100, not consecutive) and new Chapter 1 (Articles 1–5, Sections 17010–17300, not consecutive) filed 5–29–81; effective thirtieth day thereafter (Register 81, No. 22).

#### Article 2. Definitions

#### § 17030. Definitions.

The following definitions apply to both Chapter 1 and Chapter 2 of the Local Agency Personnel Standards. Where more appropriate, definitions are incorporated into the text of a regulation.

- (a) Appointing Authority: Local agency legislative body or a department head (or their representative) having authority to appoint and to remove employees from employment.
- (b) Career Service: All positions in a local agency that are covered by these rules. See Section 17200 for identification of covered and exempted positions.
- (c) Certification: Forwarding of names of eligibles from an appropriate eligible list or lists to the appointing authority.
- (d) Discrimination: The adverse effects of a personnel management decision on employees or applicants based on race, color, sex, age, disability, religious creed, national origin, ancestry, marital status, or other category identified by statute, when such decision is not based on job—related criteria.
- (e) Executive Officer: The individual appointed by the California State Personnel Board to serve as its executive officer. Under the provisions of Government Code Section 18654, any power, duty, or jurisdiction which the Board may legally delegate is presumed to have been dele-

gated to the executive officer unless the Board has formally reserved the same for itself.

- (f) Federal Standards: Those standards contained in the "STAN-DARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION" which are filed in regulatory form in the Consolidated Federal Register (CFR) under Title 5, Part 900, Subpart F (Vol. 44, No. 34, Friday, February 16, 1979) or such future revisions which become applicable.
- (g) Impartial Process: A dispute resolution procedure wherein a decision is rendered by a group or individual capable of making an objective judgment free of favor or prejudice. Such group or individual may include but is not limited to the following:
- (1) A "civil service commission" established substantially as set forth in Government Code Sections 31110 through 31113, inclusive, provided no member serves in any other capacity in the local agency; and
  - (2) Any other group or individual selected:
  - (A) By mutual agreement of the parties; or
- (B) By some other objective method which will ensure impartiality. Examples of those who might satisfy these latter conditions are ad hoc panels, State Hearing Officers, and professional arbiters.
- (h) Local Agency: As defined in Government Code Section 19810, local agency means any city, county, city and county, district, or other subdivision of the state or any independent instrumentality thereof.
- (i) Permanent Appointment: The status of an employee who has completed a probationary period.
- (j) Permanent Status: The employment condition in which an employee has rights in the career service and in a class. Upon satisfactory completion of the probationary period following initial appointment, an employee gains permanent status in the career service, and is subject to removal from the career service only for cause, curtailment of work or lack of funds. Upon satisfactory completion of the probationary period following promotion within the career service, an employee gains permanent status in the class to which promoted, and is subject to removal from the class only for cause, curtailment of work or lack of funds.
- (k) Personnel Plan: The personnel plan consists of all documents governing employment in the departments of a local agency administering state and federally funded programs. These include, but are not necessarily restricted to: charter provisions; salary, position budget, and enabling ordinances; rules and regulations; class specifications, examination announcements, and related materials that set forth standards; employee—management memoranda of understanding; and such other reports, minute orders, administrative rules, and procedural instructions that may be specifically requested by the State Personnel Board Executive Officer and necessary to establish a merit system for its grant—in—aid departments in accordance with these standards.
- (1) Position: Any office or employment (whether part time or full-time, temporary or permanent, occupied or vacant) calling for the performance of specified and related duties.
- (m) Probationary Period: The time limited period of paid service which is an extension of the examination process required before an employee gains permanent status.
- (n) Statistically Significant: the degree of underutilization is equal to or greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force*, issued March 2002, by the State Personnel Board. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.
- (o) Status: The condition of an employee's appointment, such as provisional, probationary, permanent, or as defined in the personnel rules adopted by the governing board of a local agency.
- (p) Suspension: An enforced leave of absence for disciplinary purposes or pending investigation of charges made against an employee.

(q) Underutilization: Having fewer persons of a particular race/ethnic or gender group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force. Note: Authority cited: Sections 19801. Government Code. Reference: Sections 19800–19810, Government Code; Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16; and Hazelwood School District v. United States (1977), 433 U.S. 299, 308, fn. 14.

#### HISTORY

1. Amendment of subsections (d) and (l), new subsections (n) and (q), subsection relettering and amendment of Note filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### Article 3. Merit Principles

#### Subarticle 1. Merit Principle 1

#### § 17110. General Requirement.

Recruiting, selecting and advancing employees shall be on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17111. Recruitment.

Recruitment efforts shall be planned and carried out in a manner that assures equal employment opportunity and open competition for initial career service appointment for all job applicants. Basic recruitment efforts for entry into the career service shall include posting of examination announcements in appropriate public places for a minimum of five working days to ensure that an adequate number of candidates will apply.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code; Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16; and Hazelwood School District v. United States (1977), 433 U.S. 299, 308, fn. 14.

#### **HISTORY**

 Amendment of section and Note filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17112. Selection.

- (a) Selection procedures, including appropriate ranking for entry to the career service, shall be job related and shall maximize to the extent practicable validity, reliability and objectivity. The Uniform Guidelines on Employee Selection Procedures, as published in the Consolidated Federal Register (at 5 CFR, 900, Subpart F, Appendix B), are incorporated into these rules.
- (b) Competition for appropriate positions may be limited to facilitate the employment of persons with a disability or participants in employment or rehabilitation programs authorized by Congress or the California Legislature.
- (c) Appointments to permanent career service positions shall be made through selection from appropriately ranked eligible lists. Appointment procedures may not allow appointment either beyond the top ten eligibles or the top ten percent of eligibles or the top predetermined score group of those on an eligible list who are willing to accept the conditions of employment.
- (d) Permanent appointment for entry to the career service will be contingent upon satisfactory performance by the employee during a reasonable, time-limited probationary period. As a general rule, probationary periods may not exceed one year.
- (e) Non-status appointments shall not be used as a way of defeating the purpose of the career service and shall have a reasonable time limit. As a general rule, reasonable time limit is one year. If lists of eligibles are available, they shall be used for filling temporary positions. Short-term, emergency appointments may be made without regard to the other provi-

sions of this section, to provide for maintenance of essential services in an emergency situation where normal procedures are not practical.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

#### HISTORY

 Amendment of subsections (b) and (e) and amendment of Note filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17113. Career Advancement.

Formal promotional examination processes are encouraged when filling higher level career service positions. Such processes shall maximize to the extent practicable validity, reliability and objectivity.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### Subarticle 2. Merit Principle 2

#### § 17120. General Requirement.

Equitable and adequate compensation will be provided.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17121. Classification.

Classification plans shall be maintained on a current basis, and shall:

- (a) be the foundation for selection, compensation, training, promotion, demotion, reduction in force, reemployment, and related decisions;
- (b) include class specifications formally adopted by the local agency's governing board or its authorized representative; and
- (c) include job-related minimum qualifications or employment standards of education, experience, knowledge, and abilities.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802, 19803, Government Code.

#### § 17122. Compensation.

To maintain a high quality public work force and to assure equitable compensation for comparable work, the compensation plan shall take into account the responsibility and difficulty of the work, the compensation needed to compete in the labor market, and other pertinent factors. NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### Subarticle 3. Merit Principle 3

#### § 17130. Training.

Employees will be trained as-needed to assure high-quality performance. In addition to providing training to improve performance, training should also be provided as needed to prepare employees for more responsible assignments and to implement affirmative action plans for equal employment opportunity.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### Subarticle 4. Merit Principle 4

#### § 17140. General Requirement.

Employees shall be retained on the basis of the adequacy of their performance, and provision shall be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17141. Separation and Layoff.

Employees who have acquired permanent status shall not be subject to separation except for cause or such reason as curtailment of work or lack of funds. Procedures will be established to provide for the transfer,

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demotion or separation of employees whose performance continues to be inadequate after reasonable efforts have been made to correct it. Retention of employees in classes affected by reduction in force shall be based upon systematic consideration of type of appointment and other relevant factors.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17142. Employee Evaluation.

Local agencies should establish a systematic method of evaluating employee performance which should influence such personnel management decisions as merit salary adjustments, need for training, and order of layoff.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### Subarticle 5. Merit Principle 5

#### § 17150. General Requirement.

Fair treatment of applicants and employees in all aspects of personnel administration will be assured, without discrimination and without regard to political affiliation, and with proper regard to their privacy and constitutional rights as citizens.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803 Government Code.

#### § 17151. Equal Employment Opportunity.

- (a) Equal opportunity shall exist in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of employment.
- (b) Prohibitions against discrimination consistent with the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000e et seq.), the Rehabilitation Act of 1973 as amended (29 U.S.C. § 791 et seq.), the Age Discrimination in Employment Act of 1967 as amended (29 U.S.C. 621 et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206 (d)(1)) and other relevant statutes shall be established and enforced.
- (c) Equal employment opportunity programs shall be developed and implemented to include the following:
- (1) Removal of artificial barriers to equal employment opportunity.
- (2) Assessment of the local agency's work force, including a comparison of the local agency's work force composition with the relevant labor force composition. Records of such assessments and comparisons shall be provided annually and at such other time as required to the State Personnel Board Executive Officer.
- (3) Where there is statistically significant underutilization of any group based on race, ethnicity or gender as shown by the work force-labor force comparison, the local agency shall:

Develop and implement written recruitment plans which will ensure all—inclusive outreach and equal opportunity for all groups. Copies of such recruitment plans shall be made available, upon request, to the State Personnel Board Executive Officer.

Assess selection processes to ensure that they are based solely on job-related criteria and are free of illegal adverse impact as defined in the Uniform Guidelines on Employee Selection Procedures (Guidelines), incorporated in Section 17112, against any group. Such assessments shall be conducted consistent with procedures outlined in the Guidelines. Where illegal adverse impact is found, the local agency shall identify the cause and take appropriate corrective action on a timely basis.

Comply with all equal employment opportunity requirements mandated by federal agencies as a condition for obtaining or maintaining federal funding of programs.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code; Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16; and Hazelwood School District v. United States (1977), 433 U.S. 299, 308, fn. 14.

#### HISTORY

Amendment of section heading, section and NOTE filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215;

effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17152. Employee/Management Relations.

- (a) Nothing in a local agency employee–management relations agreement shall conflict with these standards.
- (b) There shall be written procedures for resolving employee grievances and discrimination complaints. To the maximum extent possible, the procedures should include steps to resolve discrimination and all other types of employee grievances without recourse to formal appeals procedures.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17153. Appeals.

- (a) In the event of separation for cause or demotion for cause, local agencies shall provide permanent employees in covered programs with the right to appeal through an impartial process that results in timely, enforceable decisions.
- (b) Local agencies shall provide for appeals of alleged discrimination, by an applicant or employee, through an impartial process that results in timely, enforceable decisions.
- (c) In the event of reduction in force, employees with permanent status shall have the right to appeal the application of reduction in force rules as they relate to the establishment of and certification from layoff and reemployment lists. Such appeals shall be through an impartial process that may be recommendatory or enforceable on the appointing authority. This provision shall not be construed to provide for employee appeals of management rights to identify the classes of layoff, number of positions to be reduced, and effective date of the layoffs.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### Subarticle 6. Merit Principle 6

#### § 17160. Political Rights and Prohibitions.

The provisions of the Federal Hatch Act and applicable state statutes shall be followed. All employees shall be informed of their political rights and prohibited practices under the Hatch Act and applicable state laws.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### Article 4. Administration

## § 17200. Employment Covered and Exempted from Standards.

- (a) These standards apply to personnel engaged in the administration of federally aided programs which by law or regulation require a merit system of personnel administration that meets standards published by the United States Office of Personnel Management. These rules are applicable to all positions in such programs, irrespective of the source of funds for their individual salaries, except those exempted by this section.
- (b) The following positions may be exempted from application of these standards: Members of policy, advisory, review, and appeals boards or similar bodies who do not perform administrative duties as individuals; officials serving ex officio and performing incidental administrative duties; one confidential assistant or secretary to any of the foregoing exempted officials; attorneys serving as legal counsel or conducting litigation; the executive head of an independent local agency or department administering programs covered by these rules; deputies who share with executive head authority over all major functions in covered local agencies or departments; time–limited positions established for the purpose of conducting a special study or investigation; and unskilled labor.
- (c) County Welfare Directors and Deputy Directors who had permanent status in such classes on the date these regulations became effective shall continue to retain the rights of permanent status as long as they continue to occupy positions they held on the effective date of these regulations

- (d) Additional exemptions of positions must receive the prior approval of the State Personnel Board Executive Officer.
- (e) Waivers from specific provisions of these regulations may be granted by the State Personnel Board Executive Officer, at the request of a local agency, for time-limited experimental or research projects designed to improve merit systems or their operations. To the extent such a waiver also involves waiving provisions of the Federal Standards for a Merit System of Personnel Administration, the State Personnel Board Executive Officer shall review the request and make a recommendation in the manner required by the United States Office of Personnel Management.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### HISTORY

1. Amendment filed 12–11–84; effective thirtieth day thereafter (Register 84, No. 50).

## § 17201. Extension of Merit System and Changes in Merit System Jurisdictions.

Upon the initial extension of merit system coverage to a program, an employee may obtain status through a noncompetitive qualifying process

An employee with permanent status under a merit system meeting these standards will retain comparable status if the program is placed under the jurisdiction of another merit system.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17210. Procedure for Establishing and Maintaining an Approved Local Merit System.

- (a) Any local agency wishing to establish and administer its own Approved Local Merit System for its grant-aided departments shall:
- (1) request the State Personnel Board Executive Officer to review and approve its system; and
- (2) adopt a personnel plan for its grant-in-aid departments in accordance with these standards. The State Personnel Board Executive Officer shall publish criteria for determining if personnel plans and personnel management practices meet the requirements of these standards.
- (b) Amendments to personnel plan materials for an Approved Local Merit System and its continuing administration shall be subject to review on an ongoing basis by the State Personnel Board Executive Officer for conformity and compliance in operation. Materials requested by the State Personnel Board Executive Officer to determine conformity with these standards will be supplied by local agencies.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802 and 19803, Government Code.

#### § 17220. Requirements for Records and Reports.

Appropriate records shall be maintained and available to permit determination by the State Personnel Board that a jurisdiction conforms to these requirements and its own rules and regulations. Decisions on selection, classification and certification require documentation.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19802, 19803, and 19808, Government Code.

#### Article 5. Assuring Compliance

#### § 17300. Enforcement.

When corrective action relating to a standards issue is required, the State Personnel Board Executive Officer will negotiate with the appropriate local agency. Technical assistance necessary to comply with these rules will be provided by the State Personnel Board Executive Officer at the request of the local agency. In the event the issue is not resolved within a reasonable period of time, the State Personnel Board Executive Officer may take any or a combination of the following actions:

- (a) Require the local agency to use approved Interagency Merit System procedures.
- (b) Withdraw approval of the local merit system. The agency will revert to Interagency Merit System status.

(c) Recommend that the funding department or the State Controller withhold from the local agency funding that applies to the procedure in question

Local agencies may appeal such action to the State Personnel Board. The State Personnel Board may also conduct a hearing under Government Code Sections 19805 and 19806 to determine whether a particular merit system is in compliance with the standards. When the Board, after hearing, determines that a local merit system is not in conformity with the Standards, it shall notify such local agency and the appropriate State officers in writing of its decision.

NOTE: Authority cited: Section 19801, Government Code. Reference: Sections 19805–19808, Government Code.

#### Chapter 2. Merit System Regulations

#### Article 1. Administration

#### § 17400. Interagency Merit System Regulations.

The provisions of Local Agency Personnel Standards Chapter 1 apply to all local agencies, including those in the Interagency Merit System (IMS), subject to the requirements of Government Code Sections 19800–19810.

The provisions of Chapter 2 are the regulations for the Interagency Merit System. They are adopted by the State Personnel Board in accordance with the provisions of Government Code Section 19803, which provides for State Personnel Board administration of a merit system for local agencies not administering their own merit systems, in order to assure State conformity with applicable Federal requirements.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### **HISTORY**

1. Repealer of Chapter 2 (Articles 1–6, Sections 17400–17592, not consecutive) and new Chapter 2 (Articles 1–9, Sections 17400–17592, not consecutive) filed 10–14–80; effective thirtieth day thereafter (Register 80, No. 42).

#### § 17402. Applicability of Specific Portions of Chapter 1.

The following sections of Chapter 1 are not repeated in Chapter 2, but apply in the Interagency Merit System: Employment Covered and Exempted (17200), Definitions (17030), Equal Employment Opportunity and Affirmative Action (17151), Employee/Management Relations (17152), Political Rights and Prohibitions (17160), and Extension of Merit System and Changes in Merit System Jurisdiction (17201).

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

#### HISTORY

1. Amendment filed 5–29–81; effective thirtieth day thereafter (Register 81, No. 22).

#### § 17403. Delegation to the State Personnel Board Executive Office and State Personnel Board Staff.

The provisions of Government Code 18654 and 18654.5 are reprinted in these regulations, and are applicable in the Interagency Merit System: "18654. The intention of the Legislature is hereby declared to be that the executive officer shall perform and discharge under the direction and control of the board the powers, duties, purposes, functions, and jurisdiction vested in the board and delegated to him by it.

"Any power, duty, purpose, function, or jurisdiction which the board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the Board by affirmative vote recorded in its minutes specifically has reserved the same for its own action. The executive officer may redelegate to his subordinates unless by board rule or express provision of law he is specifically required to act personally.

"18654.5. The executive officer shall administer the civil service statutes under rules of the board, subject to the right of appeal to the board."

Whenever it is stated in these rules that the "State Personnel Board" may or shall act, the State Personnel Board specifically has reserved the same for its own exclusive action. Whenever it is stated that the "State

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Personnel Board Executive Officer' may or shall act, the Executive Officer of the State Personnel Board has the authority to act thereon. Nothing herein prohibits the Executive Officer from redelegating to subordinates as provided in Section 18654 of the Government Code. Any party in interest may appeal to the State Personnel Board for review of the actions and decisions of the Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17404. Authorized Use of Local Agency Regulations.

Upon local agency request, the State Personnel Board Executive Officer ay. in lieu of one or more IMS regulations, authorize the use of local agency regulations which:

- (a) Meet the requirements of Chapter 1; and
- (b) Meet conditions which may be more specifically set forth in these IMS regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17405. Delegation to Local Agency.

Upon mutual agreement between the State Personnel Board Executive Officer and a local Interagency Merit System agency, and subject to appropriate audit and controls, authority for administering portions of these regulations may be delegated to a local agency personnel office or program department.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17406. Availability of Local Agency Personnel Standards.

Each agency within the IMS shall have copies of these LAPS regulations readily available for employee reference.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17408. Adequate Notice of Action Taken.

Where provisions of these regulations require that a party or parties concerned be notified of actions taken, notification by letter to that party's or parties' last known address(es) shall constitute adequate notice of such action.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Article 2. Classification

#### § 17412. Establishment of Classification Plan.

The State Personnel Board Executive Officer shall establish and maintain a classification plan for all positions covered by these regulations. The classification plan shall be the basis for selection, compensation, training, promotion, demotion, reduction in force, reemployment and related decisions. The classification plan shall include class specifications which shall be established and maintained by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17414. Position Allocation.

Every position within the Interagency Merit System shall be allocated to an appropriate class within the classification plan. The allocation of positions to classes within the classification plan is the responsibility of the State Personnel Board Executive Officer. Those positions which meet the following criteria shall be included within the same class:

- (a) The duties and responsibilities are sufficiently similar that they may be described by the same title;
- (b) Within a given local agency the same salary rate or range may equitably apply;
  - (c) The knowledge and abilities required are the same;
- (d) Substantially the same tests of fitness are required. The local appointing authority shall report to the State Personnel Board Executive Officer any intention to establish new positions and material changes in the

duties of any position under that person's jurisdiction in order that such positions may be classified and allocated.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17416. Use of Local Agency Classifications.

The State Personnel Board Executive Officer may authorize the use of local agency classification plans for clerical, staff services and other agencywide class series. Such classification plans shall:

- (a) Be the basis in other departments of the local agency for the personnel management decisions listed above in Section 17412.
- (b) Include written class specifications formally adopted by the local agency governing board or its authorized representative.
- (c) Include in the written class specifications job-related minimum qualifications of education, experience, knowledge and abilities.
- (d) Be the basis for position allocation, using the criteria listed above in Section 17414.

Copies of local agency class specifications authorized under this section for use in the Interagency Merit System shall be filed with and retained by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17418. Status of Incumbent of Reallocated Position.

The incumbent of a reallocated position may be moved to the new class only in accordance with the regulations governing promotions, demotions, transfers, and reinstatements except as otherwise provided for by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17420. Training Assignments.

The appointing authority may, with the employee's agreement, and with the prior approval of the State Personnel Board Executive Officer, assign an employee duties allocable to another class for the purpose of training. Such an assignment shall not be to another class in the same class series, nor shall it require the layoff or demotion of another employee. Such an assignment shall initially be for no more than one year. Extension of such a training assignment may be made for up to one additional year when the parties concerned are in agreement. An employee participating in such an arrangement shall have the right to return to a position in the former class upon completion of the training assignment.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Article 3. Compensation

#### § 17422. Compensation Plan.

Each local agency shall have a compensation plan which shall include: (a) a salary rate or range for each class; and (b) salary rates or ranges based on difficulty of work with reasonable differentials between classes; and (c) salary rates or ranges which take into consideration prevailing compensation for comparable positions in the geographic area of recruitment. The compensation plan shall apply equitably and uniformly to all employees. The local agency compensation plan, approved by the local legislative body or its designated representative, shall be forwarded to the State Personnel Board Executive Officer, showing the date of adoption or change and the effective date of implementation.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17424. Salary Payment.

Employees in a class shall be paid the salary established for the class, except as otherwise provided in these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17426. "Y" Rate.

At the recommendation of the appointing authority, and with the concurrence of the State Personnel Board Executive Officer, an employee's salary may remain above the maximum for the employee's class if the salary would be reduced through no fault of the employee.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Article 4. Examining

#### § 17430. Entry to Career Service.

Entry into the Interagency Merit System career service covered by these regulations shall be through open competitive examination. Subject to approval by the State Personnel Board Executive Officer, competition for positions identified by the appointing authority may be limited to facilitate the employment of the handicapped or participants in employment or rehabilitation programs authorized by Congress or the California Legislature.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17432. Announcements.

Public notice of all examinations for establishment of eligible lists shall:

- (a) Be given in sufficient time to allow potential applicants to make application for competition. Announcements shall be posted for a minimum of five working days unless the State Personnel Board Executive Officer determines that a shorter posting period is necessary to meet the needs of the appointing authority; and
- (b) Provide the following minimum information: title, salary, minimum and special qualifications for the class, place, scope, and approximate date of the examination.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17434. Special Recruitment.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Repealer filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17435. General Qualifications.

The following general qualifications shall be deemed to be a part of the personal characteristics included in the minimum qualifications of each class specification and need not be specifically set forth therein: integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment.

A valid California driver's license is required where the position requires the driving of an automobile.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17436. Minimum Qualifications.

All candidates for employment within the Interagency Merit System shall possess the minimum qualifications established for the class.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17440. Special Qualifications.

When required by the needs of the service, special qualifications in specific skill or knowledge areas may be prescribed by the State Personnel Board Executive Officer for specified positions within a class.

When such special qualifications are needed, examinations will test the special skill or knowledge area, and only eligibles possessing such special qualifications will be certified for vacancies in positions requiring them.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17442. Applications.

Application for examination shall be made on forms furnished or approved by the State Personnel Board Executive Officer. Applicants shall certify the truth of statements made on the application by their signature. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800. Government Code.

#### § 17444. Selection Process.

Eligible lists shall be established as the result of competitive examinations open to all persons who lawfully may be appointed to positions within the class for which such examinations are held.

Examinations shall fairly test and determine the qualifications, fitness and ability of competitors to perform the duties of the class to which they seek appointment.

Examinations shall be held at such times and places and be conducted under such procedures as the State Personnel Board Executive Officer may determine. Written examinations shall be so managed that no examination paper will disclose the name of any applicant until all the examination papers are scored objectively and both the key answers and the passing score have been determined.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17446. Promotional Examinations.

(a) The State Personnel Board Executive Officer may announce and hold promotional examinations for the purposes of establishing promotional eligible lists for specified areas, local agencies, or subdivisions of local agencies.

Participation in promotional examinations shall be limited to permanent or probationary or other employees who are designated in advance of the examination by the State Personnel Board Executive Officer as eligible to participate. Local agency employees other than those with permanent or probationary Interagency Merit System appointments must have obtained their initial local agency appointments through a job—related competitive selection process in order to compete in a promotional IMS examination under this rule.

- (b) Upon request of the appointing authority, the State Personnel Board Executive Officer may decide to not require a publicly announced promotional examination in case of reclassification of a position or when the size of the potential candidate group is less than the number of eligibles that would be certified. In such cases, all of the following conditions shall be met.
- (1) Only individuals having permanent or probationary Interagency Merit System status within the department where the vacancy exists shall be allowed to compete.
- (2) All individuals eligible for consideration shall be notified of the vacancy in writing, and if interested, shall be interviewed for it by the appointing authority.
- (3) The individual appointed shall meet the minimum qualifications for the class.
- (c) In order to facilitate promotion from aid classes, as defined in the class specifications, the State Personnel Board Executive Officer may authorize use of a scored evaluation of work experience in such class to be used in lieu of one of the parts of the competitive examination. This provision applies only where there are two or more scored parts of the competitive examination.
- (d) Promotion from trainee to first journey level classes, as defined in the class specifications, shall be made on the basis of:
- (1) The employee meeting the minimum qualifications for the first journey level class, and
- (2) A written statement from the appointing power or an official designated by the appointing power that the employee's job performance meets the department's requirements for promotion to the first journey level class.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Amendment filed 12–11–84; effective thirtieth day thereafter (Register 84, No. 50).

#### § 17448. Examination Records.

All examinations, and any papers submitted by competitors, are property of the State Personnel Board and are confidential records which shall be opened for inspection only as follows or under such conditions as are further specified by the State Personnel Board Executive Officer:

- (a) On written request to the State Personnel Board Executive Officer, competitors may, within 14 calendar days after the date on which the Notifications of Test Results of such examination were mailed to them, compare their answer sheets with a scoring key at such time and place and under supervision of such person as the State Personnel Board Executive Officer may designate.
- (b) A competitor's papers shall be open to inspection only by the competitor, or a representative upon written authorization of such competitor. The application form of eligibles certified to fill vacancies may be inspected by the appointing authority to whom such eligibles have been certified or by an authorized representative.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17450. Rating Examinations.

The State Personnel Board Executive Officer shall determine the results of each applicant's examination in conformance with these regulations and the examination announcement. All applicants in the same examination shall be accorded equal treatment in all phases of the examination procedure in accordance with these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17452. Disqualification of Applicants.

The State Personnel Board Executive Officer may refuse to examine an applicant, or, after examination, may disqualify such applicant or remove the applicant's name from an eligible list, or refuse to certify any eligible on an eligible list for any of the following reasons:

- (a) Failure to meet the requirements prescribed for participation in the examination as announced in the public notice;
- (b) Failure to file the application correctly or within the prescribed time limits:
- (c) False statements of material facts or attempted deception in the application or examination;
- (d) Disability which renders the applicant unfit for performance of the principal duties of the class (however, candidates who otherwise meet the qualifications and pass the examination may be appointed to certain positions):
- (e) Conviction of any crime which renders the person unsuitable for a position in the class;
- (f) Dismissal from prior employment for a cause rendering the applicant unfit for a position in the class;
- (g) Participating in the compilation, administration, or correction of the examination;
- (h) Use or attempted use of political pressure or bribery to secure an advantage in an examination or appointment;
- (i) Any other action of the applicant that renders the applicant unsuitable for employment.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17454. Selection Process Appeal Procedures.

Examination appeals may be filed in accordance with the provisions of Article 8, Appeals, Grievances and Complaints.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Article 5. Certification

#### § 17458. Establishment of Eligible Lists.

An eligible list consisting of names of persons who qualified shall be established after each examination. Names shall be placed on the eligible list in order of their final rating, starting with the highest.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17460. Merged Lists.

The State Personnel Board Executive Officer may merge eligible lists for a class. Names shall be placed on a merged list in order of their scores on the original lists, starting with the highest. Persons whose names appear on merged lists shall retain their eligibility until the date the original list on which they appeared would have expired.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17461. Certification from Comparable List.

If an eligible list is exhausted, as provided in Section 17468, the State Personnel Board Executive Officer may certify names from an eligible list or lists for a related class. Waiver of certification from such comparable lists does not affect the eligible's standing on the original list for the class for which the eligible was examined.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

#### HISTORY

1. Amendment filed 5–29–81; effective thirtieth day thereafter (Register 81, No. 22).

#### § 17463. Order of Eligible Lists.

As provided in Sections 17518 and 17519, reemployment lists shall take precedence over all other eligible lists. In the absence of an appropriate reemployment list, the order of eligible lists shall be:

- (a) Departmental promotional list
- (b) Local agency promotional list
- (c) Open lists

If fewer than five names of persons willing to accept appointment are on a list, additional eligibles shall be certified from the list or lists next in order until five names are certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17464. Removal of Name from Promotional Eligible List.

A person who terminates employment within the IMS shall be considered as having relinquished the right to be considered for promotion, and the person's name shall be removed from any promotional eligible lists on which it appears. If the person is reemployed by an IMS agency, the name shall, upon written request to the State Personnel Board Executive Officer, be returned to the promotional list or lists on which it appeared, providing that such list or lists are still in existence.

If an employee who is competing in a promotional examination resigns before the date the eligible list is established, the employee shall not attain any promotional eligibility from such examination.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17466. Transfer of Eligibility.

The State Personnel Board Executive Officer may transfer an individual's eligibility from one local agency's eligible list to another local agency's eligible list for the same class if requested by the receiving local agency's appointing authority.

A competitor unsuccessful in an examination for a given local agency will not be permitted to transfer eligibility established elsewhere for the same class to the list resulting from the examination that the competitor failed.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17468. Exhaustion of Eligible Lists.

If there are fewer than five eligibles available to an appointing authority, the State Personnel Board Executive Officer may consider an eligible list to be exhausted for that appointing authority.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17470. Certification of Names.

When a local agency notifies the State Personnel Board Executive Officer that it anticipates it will have a vacant position, the State Personnel Board Executive Officer shall certify to the appointing authority the names and addresses of the five persons who stand highest on the eligible list for the class to which the position belongs and who have indicated a willingness to accept the conditions of employment.

The number of names to be certified to the appointing authority shall be on the basis of the number of appointments to be made plus four, except that when the score for the last certifiable name on an eligible list is the same as one or more scores following it, all names having that same score shall be certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code

#### § 17471. Use of Local Agency Certification Rule.

Upon request of a local agency, the State Personnel Board Executive Officer may approve the use of the local agency's certification rule in lieu of the rule in Section 17470 if such local agency certification rule meets all of the following criteria:

- (a) It has been formally approved by the governing board for use in all the agency's nongrant-aided departments.
- (b) It includes a specific limitation on the number of names to be certified.
- (c) Application of the rule is not likely to result in certification of the entire eligible list, or in referral of more eligibles than the appointing authority can reasonably interview for the available vacancies.

When a local agency certification rule is to be used in connection with an IMS examination, the rule shall be described in the examination announcement

A local agency certification rule may not be used in cases of certification from reemployment lists unless the State Personnel Board Executive Officer has approved the use of the local agency's procedures for layoff and reemployment as provided in Section 17521.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17473. Contacting Eligibles.

Eligibles contacted to ascertain their interest in appointment shall be given a reasonable time to respond. The appointing authority shall inform all eligibles contacted of the class, salary, location, nature of appointment special conditions of the position, and the nature of response required. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17475. Acceptable Conditions of Employment.

The State Personnel Board Executive Officer shall ascertain from each eligible the acceptable conditions, tenure, location, and other pertinent conditions of employment under which the eligible will accept appointment. Such statement of acceptable conditions of employment by the eligible shall constitute an automatic waiver of certification to positions having less acceptable conditions of employment. Conditions of employment acceptable to an eligible may be changed at the eligible's written request to the State Personnel Board Executive Officer, but in such event the eligible shall not be retroactively certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17477. Waivers.

An eligible may voluntarily waive the right of appointment or the right to be considered for appointment. No person shall cause or attempt to cause an eligible to waive these rights. Written evidence of waiver shall be submitted by the appointing authority, upon request, to the State Personnel Board Executive Officer.

An eligible's name shall be removed from an eligible list when the eligible indicates no interest to three offers of employment or to three inquiries sent by the appointing authority to determine interest in employment. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17478. Placement on Inactive List.

- (a) Lists Resulting From Open and Promotional Examinations. An eligible's name shall be placed on the inactive list when the eligible:
- (1) Fails to respond within stated time limits to a communication regarding availability for employment;
  - (2) Fails to appear for a job interview;
  - (3) Accepts a job offer but fails to report to work;
- (4) Requests in writing to the State Personnel Board Executive Officer to be temporarily withdrawn from the eligible list;
  - (5) Cannot be located by postal authorities.
- (b) Reemployment Lists. An eligible's name shall be placed on the inactive reemployment list upon written request from the eligible to the State Personnel Board Executive Officer.

An eligible's name may be restored to the active eligible list or reemployment list upon written request from the eligible to the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 6. Appointments, Transfers and Nonpunitive Separations and Demotions

#### Subarticle 1. Appointments

#### § 17481. Appointments.

All appointments to positions in the Interagency Merit System shall be as a result of certification from eligible lists or reemployment lists, or as provided in Sections on employment covered and exempted from standards (17200), provisional appointments (17482), emergency appointments (17485), promotional examinations (17446), transfer (17498, 17500, 17515, and 17590), reinstatement (17528 and 17590), extension of merit system coverage (17201), and demotion (17525). The provisions of these listed sections shall not be applied in a manner which circumvents the general requirement that appointments shall be made on the basis of competition.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

#### HISTORY

1. Amendment filed 5–29–81; effective thirtieth day thereafter (Register 81, No. 22).

#### § 17482. Provisional Appointments.

If no eligible list exists for a class, or the list is exhausted as provided in Section 17468, the State Personnel Board Executive Officer may authorize the appointing authority to make provisional appointments to that class. The provisional appointee must meet the minimum qualifications for the class. No person may serve in a provisional appointment for more than 60 calendar days after an eligible list has been established for the class, and in no event for more than six months from the date of appointment unless an extension is authorized by the State Personnel Board. Prompt notice of provisional appointment shall be given to the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17483. Reinstatement to Former Position upon Termination of Provisional Appointment.

Permanent or probationary employees who have accepted provisional appointments in higher classes within the same local agency have the right, at the termination of the provisional appointments, to be reinstated to positions in their former classes.

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NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17485. Emergency Appointments.

Whenever an emergency exists which requires immediate services, and it is not possible to secure persons from appropriate eligible lists, the appointing authority may appoint without regard to other provisions of these rules governing appointments. In no case, however, shall an individual serve under an emergency appointment for more than a total of 30 working days in any 12-month period.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17486. Limited-Term Appointment.

If an employee is needed for a limited period, a certification of names shall be made by the State Personnel Board Executive Officer of those eligibles who have indicated willingness to accept limited—term employment. The duration of limited—term appointments shall be for no longer than one day less than the probationary period.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17488. Intermittent Appointments.

Extra—help or on—call positions which require work on an intermittent basis shall be filled by people on eligible lists willing to work on that basis. If there is not a sufficient number of eligibles willing to work on that basis, the eligible list shall be considered exhausted for that type of appointment, as provided in Section 17468, and a provisional appointment may be made. The employment of persons on an irregular or extra—help basis shall not be used as a way of circumventing the requirements in these regulations. The State Personnel Board Executive Officer shall establish procedures to control the use of intermittent appointments.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code. Probationary Periods

#### § 17490. Probationary Periods.

- (a) The probationary period is considered an extension of the selection process. Each appointment to a permanent position from an eligible list shall include a probationary period as a condition of appointment. The probation period shall not exceed one year, and shall be the same for each position within a class.
- (b) Reports of probationers' overall performance shall be made to them at sufficiently frequent intervals to keep them adequately informed of their progress on the job. A written appraisal of performance shall be made to the employee at least twice during the probationary period, the first being no later than upon completion of the first half of the probationary period and the second being prior to the completion of the last month of the probationary period. The final probationary report shall be made available, on request, to the State Personnel Board Executive Officer. If the required performance report is not prepared, a probationer automatically acquires permanent status at the end of the probationary period unless formally rejected under Section 17493.
- (c) Provisional or limited-term employment, or employment in the same agency in employment or rehabilitation programs authorized by Congress or the California Legislature, may be credited as part of the probationary period when such employment is immediately followed by probationary appointment to the same class.
- (d) An employee in a permanent position who is working less than a normal work week shall remain on probation for an hourly equivalent of the probationary period.
- (e) The appointing authority may require an employee who receives an appointment either through permissive reinstatement or transfer to serve a new probationary period.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17491. Use of Local Agency Rules on Probationary Periods.

The State Personnel Board Executive Officer may authorize use of local agency rules governing probationary periods if such rules meet all of the following criteria:

- (a) Probationary periods must be time limited and must be the same for all positions in a class.
- (b) If the local agency rules provide that probationary periods may be extended, extensions shall be allowed only for extended absence of the employee or for other similar reasons written into the rules and approved by the State Personnel Board Executive Officer.
- (c) There shall be a written report of probationary performance at the end of the probationary period and such report will document whether the probationer is to be given permanent status. If the required performance report is not prepared, a probationer automatically acquires permanent status at the end of the probationary period unless formally rejected under Section 17493.
- (d) Provisions shall be written into the rules to cover length of probationary periods for other than full-time employees.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17493. Rejection During Probationary Period.

At any time an employee may be rejected from a probationary appointment without right of appeal or hearing, except that such rejection shall not be based on political affiliation or discrimination. A statement of cause for rejection shall be delivered to the employee in writing before the rejection shall be finally effective.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Subarticle 2. Performance Appraisal

#### § 17495. Performance Appraisal.

Each IMS agency should establish a systematic method of evaluating employee performance, which should influence such personnel management decisions as merit salary adjustment, need for training, performance improvement and order of layoff. In order to be recognized under these rules, such a system should meet all of the following criteria:

- (a) It must be applied systematically to all employees in the department.
  - (b) It must require regular, periodic reports, at least once each year.
- (c) Reports must be in writing, and there must be a system for retaining written reports.
- (d) Performance rating criteria must be job related and objective and applied consistently to all employees in a class. (e) The employee shall have an opportunity to review and respond to each written performance evaluation before it becomes an official part of that employee's record.
- (f) There must be a local agency administrative complaint process through which employees can challenge performance evaluations which are overall below standard or lower.(g) Employees must be made aware of the purposes for which performance reports are made and the personnel management decisions which will be influenced by employee performance reports.
- (h) Performance reporting forms must be designed in such a way that overall performance which is superior and overall performance which is unacceptable are clearly distinguished from other possible ratings of overall performance.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Subarticle 3. Transfer

#### § 17498. Transfer of Employee in the Same Class.

The appointing authority may transfer an employee from a position in one organizational subdivision to another position in the same class in the same or another organizational subdivision. An employee may transfer from a position in one local agency to a position in the same class in another local agency upon mutual agreement of the employee and the receiving local agency and providing there is no reemployment list for the class of transfer in the receiving agency.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17500. Interclass Transfer.

- (a) Transfer of an employee from a position in one class to a position in another class at substantially the same level shall be made only with the prior approval of the State Personnel Board Executive Officer. The knowledge and abilities of the classes must be so closely related that the employee can reasonably be expected to discharge the duties of the new class by the end of the probationary period.
- (b) Transfers within the same local agency shall not result in salary increases that equal or exceed the difference between the salary for the class from which transfer is proposed and the salary for the next logical promotional class. Typically, the higher promotional class is the next higher class in a series.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Subarticle 4. Reduction in Force

#### § 17502. Reduction in Force.

- (a) Whenever it is necessary because of lack of funds or whenever it is otherwise in the best interests of the appointing authority to reduce staff, the appointing authority may lay off employees including those who have been granted an approved leave of absence. The order in which employees would be separated or demoted in a reduction in force shall be based upon type of appointment, seniority and to the extent practical, relative efficiency. If a performance reporting system is used to determine relative efficiency, it must meet the requirements of Section 17495.
- (b) When a layoff is imminent in a local agency, the State Personnel Board Executive Officer may prohibit appointments, except from reemployment lists, to classes of potential layoff, lower level classes in the same series, and classes to which transfer under Section 17500 or 17515 could be made.
- (c) If federal law or the United States Constitution requires the adjustment of the order of layoff pursuant to Government Code Section 19798, or if the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, a local agency may not proceed with a seniority—based layoff, but may have to adjust the order of layoff in accordance with Section 17520.

NOTE: Authority cited: Section 19803, Government Code. Reference: Sections 19798 and 19800, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

#### HISTORY

 New subsection (c) and amendment of NOTE filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

#### § 17504. Area of Layoff.

The classes and geographic areas of layoff are to be determined by the appointing authority, subject to concurrence by the State Personnel Board Executive Officer.

Employees laid off in designated programs or geographic areas of a department shall have the right to displace employees in other programs or geographic areas of the department who are lower on the seniority list as determined by Section 17510.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17508. Seniority Score Computation.

(a) Persons with permanent or probationary appointments in an IMS agency shall receive credit for all employment in agencies governed by LAPS Chapter 1 and Chapter 2 if that employment has not been broken

by a permanent separation of 6 months. When there has been a permanent separation of 6 months or more, credit shall be given only for employment following such break in service. Persons hired from a reemployment list regain all previously earned seniority on the date of reemployment. An employee who transfers from a department covered by these rules to another department in the same local agency, and who subsequently returns without a permanent separation, retains seniority earned prior to the transfer from the IMS—covered department.

- (b) Notwithstanding the provisions of 17508(a), employees on approved leaves of absence such as educational leave, military leave, maternity leave, and disability leave shall retain seniority accumulated before the leave of absence. The time on such approved leave of absence is not included in the seniority score computation. Time on industrial disability leave shall be included in the seniority score computation.
- (c) One point seniority credit shall be given for each qualifying month of service.
- (d) Twelve points shall be added to the seniority score of an employee with an overall rating of superior, outstanding or similar term denoting the highest rating category in the local agency performance appraisal system, on the last two regularly scheduled written performance reports. This provision applies only if the local rating system meets the provisions of Section 17495.
- (e) When two or more employees have the same total seniority score, the tie shall be broken and preference given in the following sequence: employee with the greatest seniority in the class in which layoff is being made and in higher level classes; employee with the greatest seniority in the department of layoff; employee with the greatest seniority in agencies covered by LAPS Chapter I and Chapter 2; employee with the greatest seniority in the local agency; employee whose name is drawn by lot by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Amendment filed 12–11–84; effective thirtieth day thereafter (Register 84, No. 50)

#### § 17510. Order of Separation in Reduction in Force.

- (a) Separation of employees shall be in order in which their names appear on the seniority list for the affected class. Persons having the least seniority credit shall be separated first, except as otherwise provided in these rules.
- (b) Employees in the same class shall be separated during a reduction in force in the following appointment sequence:
  - (1) Emergency
  - (2) Provisional
  - (3) Intermittent
  - (4) Limited term
- (5) Permanent part time and permanent full time Within limited-term and permanent part-time and permanent full-time appointments, employees with probationary status in a class shall be laid off before employees with permanent status in the same class.

Exceptions to 17510(b) may be approved by the State Personnel Board Executive Officer upon request of the local agency.

- (c) Employees who have been selectively certified by examination for special qualifications, or who have been employed from an examination given only for positions requiring special qualifications, shall be considered to be in separate classifications for purposes of reduction in force.
- (d) The following provisions apply only if the local agency performance reporting system meets the provisions of Section 17495.
- (1) Within each of the permanent appointment groups, probationary employees whose last recorded overall performance rating is unsatisfactory, unacceptable or similar term denoting the lowest rating category in the local agency performance appraisal system, shall be laid off before any other permanent or probationary employee.
- (2) Within each of the permanent appointment groups, permanent employees whose last two recorded overall performance ratings are unsatisfactory, unacceptable or similar term denoting the lowest rating category

in the local agency performance appraisal system, shall be laid off before any other permanent or probationary employee with satisfactory performance.

(e) Notwithstanding seniority provisions of these rules, employees in trainee level classes, as defined in the class specifications, shall be laid off or demoted in lieu of layoff before employees in first journey level classes in the same class series.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Editorial correction of subsection (d)(2) (Register 95, No. 40).

### § 17512. Notice to Affected Employee in Reduction-in-Force Situation.

The State Personnel Board Executive Officer, or local agency to which such authority has been delegated, shall send written notice to each employee affected by a reduction in force at least 21 calendar days prior to the effective date of the action. The notice shall include the:

- (a) Reason for layoff;
- (b) Classes to which the employee has rights under Section 17514 to demote in lieu of layoff;
  - (c) Effective date of the action;
  - (d) Seniority score of the employee;
- (e) Location of the seniority list so that employees may compare their scores with others;
  - (f) Formula by which the seniority score is computed;
  - (g) Appeal rights of the employee;
- (h) Conditions governing retention on and reinstatement from reemployment lists;
- (i) Rules regarding waiver of reinstatement and voluntary withdrawal from the reemployment list; and
- (j) Other relevant information provided by the local agency or the State Personnel Board.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17514. Demotion in Lieu of Layoff.

In lieu of being laid off, employees may elect demotion to:

- (a) Any class with substantially the same or lower maximum salary in which they had permanent or probationary status; or
- (b) A class in the same line of work as the class of layoff, but of lesser responsibility if such classes are designated by the State Personnel Board Executive Officer.

Demotion rights to specified classes may be applicable only within the department of layoff.

To be considered for demotion in lieu of layoff, employees must notify their appointing authority in writing of their election no later than seven calendar days after receiving the notice of layoff.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800. Government Code.

#### § 17515. Interdepartmental Transfer.

When a local agency is experiencing layoffs in departments not covered by the Interagency Merit System the State Personnel Board Executive Officer may approve local agency requests for appointments of individuals being laid off from other departments to vacant positions in departments in the Interagency Merit System. The State Personnel Board Executive Officer shall determine, after consideration of the selection plans under which such individuals were hired, if the knowledge and abilities of the classes involved are sufficiently related that such employees can reasonably be expected to discharge the duties of the new class by the end of the probationary period. This section cannot be used for classes where there is a reemployment list in the Interagency Merit System department.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17516. Qualifying Month of Service.

(a) When computing seniority for full-time employees the starting and ending months of a period of service shall be considered a complete

month if the employee has 15 or more calendar days of service in the appropriate calendar month. No credit is given for less than 15 days of service. The State Personnel Board Executive Officer may approve a different method of computing months of full—time service to be consistent with the method used in the local agency for departments not covered by these regulations.

(b) For other than full-time employees, 160 hours worked shall be equivalent to one month's service and seniority credit shall be given upon the completion of each 160 hours worked. The State Personnel Board Executive Officer may approve a different method of computing months of part-time service to be consistent with the method used in a local agency for departments not covered by these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17518. Departmental Reemployment Lists.

- (a) The State Personnel Board Executive Officer shall establish departmental reemployment lists, and certify names from them, for all classes in which reduction in force occurs in local agency departments covered by these rules. Such reemployment list establishment and certification may be delegated to local agencies. Departmental reemployment lists shall remain in effect for three years. Reemployment lists may be extended by the State Personnel Board Executive Officer.
- (b) Departmental reemployment lists shall contain the names of permanent employees who were laid off or demoted in lieu of layoff for each class. Local agencies shall fill all vacancies in affected classes with persons on appropriate class departmental reemployment lists based on type of appointment at time of layoff. Names shall be certified in inverse order of separation, the most senior first.

The highest available eligible who has expressed a willingness to accept employment shall be appointed. An employee whose name appears on an active departmental reemployment list will be allowed three waivers to offers of employment.

(c) Individuals may have their names removed from a departmental reemployment list and placed on an inactive list in accordance with the provisions of 17478(b). When an employee fails to reply to an offer of reemployment within 10 calendar days after mailing of the offer or, after accepting a job offer, fails to appear for work as scheduled, the employee's name will be placed on the inactive list. An employee's name may be restored to the active departmental reemployment list upon written request to the State Personnel Board Executive Officer or to the local agency to which certification for reemployment was delegated.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17519. Reemployment Lists from Other Departments Covered by These Regulations.

Where there exists a reemployment list for the same class for another department covered by these rules in the same local agency, the State Personnel Board Executive Officer may require the use of the reemployment list to fill vacancies.

The provisions of Sections 17518(b) and (c) regarding waivers and placement on inactive lists apply. An appointment shall be made from among the highest five available eligibles who have expressed a willingness to accept employment. If such a reemployment list has fewer than three names, however, the State Personnel Board Executive Officer may grant authority to make other types of appointments.

Employees appointed under these conditions may be required by the new appointing authority to serve a new probationary period. Such an appointment shall not remove a name from the reemployment list for the department from which the employee was laid off or demoted in lieu of layoff.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17520. Modified Reduction-in-Force Process.

(a) If a local agency is required by federal law or the United States Constitution to adjust the order of layoff pursuant to Government Code Section 19798, or if the failure to adjust the order of layoff in accordance

with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, the local agency shall be subject to the provisions of Government Code Section 19798 and regulations of the State Personnel Board governing the adjustment of layoff pursuant to that statute.

(b) Where the State Personnel Board, after a hearing, finds that past discriminatory hiring practices have occurred in a covered local agency department, that is subject to the provisions of Government Code Section 19798, the State Personnel Board may authorize modification of the layoff, demotion, or reemployment process of the departments under Interagency Merit System jurisdiction to remedy the effects of the discriminatory hiring practices.

NOTE: Authority cited: Section 19803, Government Code. Reference: Sections 19800 and 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

#### HISTORY

 Amendment of section and Note filed 5-7-2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

## § 17521. Alternate Procedure for Layoff and Reemployment Following Layoff.

The State Personnel Board Executive Officer may approve alternate local agency systems for conducting a layoff in departments subject to these regulations. In order for such an alternate system to be approved, it must meet all of the following conditions:

- (a) Be included in a charter provision, formal memorandum of understanding, or have been approved by the local governing board following public hearing.
- (b) Give employees credit for all employment in all agencies governed by LAPS Chapters 1 and 2 on the same basis as credit is given for service in the local agency.
- (c) Provide that employees with probationary or permanent status in a class shall be laid off after all other employees in that class.
  - (d) Provide a method for breaking tie scores.
- (e) Be based on the factors identified in 17502(a) or other objective factor
  - (f) Provide a minimum of 14 days' notice to affected employees.
- (g) Establish a mechanism for appeals to be heard by an impartial body whose decisions are binding on the appointing authority.
- (h) Include a provision which allows affected employees to demote in lieu of layoff.
- (i) Include a provision that demoted or laid off employees have first priority, for a specified period of time, for vacancies in classes from which they were laid off or demoted in lieu of layoff.

Such alternate system approved by the State Personnel Board Executive Officer will be administered by the local agency, subject to review by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code. Demotion, Reinstatement and Leaves

## Subarticle 5. Demotion, Reinstatement and Leaves

#### § 17525. Demotion.

An appointing authority may demote an employee for disciplinary or medical reasons. An employee may demote in lieu of layoff. An employee may demote voluntarily with appointing authority approval. In all cases demotion shall be to a position in:

- (a) A class determined by the State Personnel Board Executive Officer to be in the same series as the present class; or
- (b) A class in which the employee has previously held permanent or probationary status; or
- (c) A class, the knowledge and abilities of which, are determined by the State Personnel Board Executive Officer to be closely related to those of the employee's present class.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17527. Medical Demotion, Transfer or Termination.

The provisions of this rule apply to employees with permanent or probationary appointments. An appointing authority may require an employee to submit to a medical examination by a physician or physicians designated by the appointing authority to evaluate the capacity of the employee to perform the work of the position. When such a requirement is made of an employee, fees for the examination shall be paid by the appointing authority. When the appointing authority, after considering the conclusions of the medical examination provided for by this section, or medical reports from the employee's physician, and other pertinent information, concludes that the employee is unable to perform the work of the present position, but is able to perform the work of another position including one of less than full time, the appointing authority may demote or transfer the employee to such a position.

When the appointing authority concludes that the employee is unable to perform the work of the present position, or any other available position in the agency, the appointing authority may terminate the employee. The appointing authority shall make reasonable job restructuring and other accommodation before demoting or terminating an employee under this section.

The appointing authority may demote, transfer, or terminate an employee, without requiring the employee to submit to a medical examination, when the appointing authority relies upon a written statement submitted to the appointing authority by the employee as to the employee's condition, or upon medical reports submitted to the appointing authority by the employee.

The employee shall be given written notice 15 calendar days prior to the demotion, transfer or termination. No later than 30 calendar days following the notification of action, the employee may file an employment rights appeal as provided in Article 8 of these rules.

If it is determined by the appointing authority, or the State Personnel Board upon petition of the employee, that the employee who was terminated, demoted, or transferred in accordance with this section is no longer incapacitated for duty, the employee shall be reinstated to a vacant position in the class from which he or she was originally removed, in a comparable class, or in a lower related class. If there is no vacant position in the class from which the employee was originally removed, the name of the employee shall be placed upon the reemployment list for that class and upon such other reemployment lists as are determined to be appropriate by the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17528. Reinstatement.

- (a) Permissive Reinstatement. Upon request of an appointing authority to the State Personnel Board Executive Officer, a person who has held permanent or probationary status in the IMS shall be eligible for reinstatement. Reinstatement may be made to any class in which the employee previously had permanent or probationary status, or to another class with substantially the same duties as determined by the State Personnel Board Executive Officer. An appointing authority may require a reinstated employee to serve the probationary period for the class to which the employee is reinstated.
- (b) Mandatory Reinstatement After a Nonpermanent Appointment. A permanent or probationary employee who has accepted an emergency, limited—term or provisional appointment in a higher class within the same agency shall, if the employee so desires at the termination of that appointment, be reinstated to a position in the former class.
- (c) Mandatory Reinstatement After an Exempt Appointment. An employee with permanent status in the IMS who has accepted an exempt appointment as county welfare director or deputy director in the same or another IMS agency shall, if the employee so desires at the termination of that appointment, be reinstated to a position in the former class.
- (d) Mandatory Reinstatement After Rejection During Probation. A permanent appointee who has vacated a position within a department or

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subdivision that is in IMS in a county to accept another position within the same or another department or subdivision that is in IMS in the same county, and who is rejected during the probationary period, shall be reinstated to a position in the former class, except if dismissed under Section 17544. Reinstatement shall be reported to the State Personnel Board Executive Officer by the appointing authority on the appropriate personnel document.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19800, Government Code; and *Karen Patchin* (1998) SPB Dec. No. 98–06.

HISTORY

 Amendment of subsection (d) and Note filed 3-24-2000; operative 3-24-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 12).

#### § 17530. Absence Without Leave.

Absence without leave, whether voluntary or involuntarily, for five consecutive working days may be considered an automatic resignation by the local agency.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17532. Informal Leave.

An approved absence from duty without pay of an employee for a peri-

od not exceeding 20 working days will not be considered a break in service

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17534. Approved Leaves of Absence.

With the approval of the appointing authority, a permanent or probationary employee may be granted a leave of absence without pay or with partial or full pay. Except for military, education and disability leaves, the provisions of Section 17508 regarding loss of previously earned seniority credit apply to leaves that exceed six months. The State Personnel Board Executive Officer may waive this provision in order to be consistent with the rules regarding leaves of absence used by a local agency for departments not covered by these regulations.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17538. Records and Reports.

The State Personnel Board Executive Officer shall establish and maintain a service record for each employee in the Interagency Merit System. Note: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

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#### Article 7. Disciplinary Action

#### § 17542. Disciplinary Action.

As used in these regulations, disciplinary action means dismissal, demotion, reduction in compensation, suspension, or any other disciplinary action that affects the employee's present status. The appointing authority, or a designated representative of that authority, may take disciplinary action against an employee for the causes specified in this Article. Under these rules rejection during probation is not a disciplinary action.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17544. Cause for Disciplinary Action.

The action of an employee which reflects discredit upon a public service, or is a hindrance to the effective performance of the department in which the employee is employed shall be considered good cause for discipline. Such actions are:

- (a) Incompetency
- (b) Inefficiency
- (c) Neglect of duty
- (d) Insubordination
- (e) Absence without leave
- (f) Conviction of a felony
- (g) Discourteous treatment of the public or other employees
- (h) Improper political activity
- (i) Willful disobedience
- (j) Willful concealment or misrepresentation of material facts in applying for or securing employment
- (k) Other conduct either during or outside of duty hours which causes discredit to the agency or the employment

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17546. Notice of Disciplinary Action.

Written notice of disciplinary action shall be served on the recipient personally, or by certified mail.

For employees with permanent status in the class of employment or another class in the Interagency Merit System, such written notice shall be served at least five calendar days prior to the effective date of any disciplinary action, and shall include:

- (a) A description of the action taken and its effective date or dates;
- (b) A clear and concise statement of the reasons for such action including the acts or omissions on which the disciplinary action is based;
- (c) A statement advising the employee of the right to appeal to the State Personnel Board and the time within which the appeal must be made;
- (d) A statement that a copy of the materials upon which the action is based is attached or available for inspection upon request; and
- (e) A statement advising the employee of the right to respond either verbally or in writing, to the authority proposing the action prior to its effective date.

For employees without permanent status in the class of employment or another class in the Interagency Merit System, such written notice shall be served no later than 15 calendar days after the effective date of any disciplinary action, and shall include items (a), (b) and (c) above.

The notice of disciplinary action shall conform to standards approved by the Executive Officer.

A copy of the notice of disciplinary action shall be filed with the State Personnel Board Executive Officer.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17548. Disciplinary Action Becomes Final.

If the employee fails to appeal a disciplinary action within the time specified, or, after appealing, withdraws his appeal, the disciplinary action taken by the appointing power shall be final. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 8. Appeals, Grievances and Complaints

#### § 17550. Appeals.

(a) Employment Rights Appeals—As provided in Government Code Section 19803, the State Personnel Board shall hear and decide employment rights appeals. The following actions, when taken against employees with permanent status in the Interagency Merit System, are appealable to the State Personnel Board: Involuntary demotion, dismissal, suspension, medical termination or transfer, automatic resignation, reduction in pay for disciplinary reasons, other disciplinary action that affects the employee's present status, layoff, refusal to hire from a reemployment list, and grievances involving discrimination or political affiliation. Grievances involving discrimination or political affiliation shall be processed as provided in Sections 17570–17575, and be filed with the State Personnel Board only if not resolved locally.

Rejection during probation is not appealable to the State Personnel Board unless such rejection is alleged to be on the basis of discrimination or political affiliation.

Employment rights appeals shall be processed as provided for in Sections 17552–17567 of these rules.

(b) Selection Process Appeals—Employees and applicants may appeal selection process decisions as provided in Sections 17580–17582 of these rules.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17551. Grievances.

- (a) Where the term grievance is defined in a local memorandum of understanding, ordinance or resolution applicable to employees in positions covered by these rules, that definition shall be used in lieu of the definition in Section 17571. Where the term grievance is not defined in a local memorandum of understanding, ordinance or resolution applicable to employees in covered positions, the definition in Section 17571 shall be used.
- (b) Grievances shall be processed as provided in applicable local memoranda of understanding, ordinances or resolutions. If there is no memorandum of understanding, ordinance or resolution for covered positions, the Interagency Merit System grievance procedure described in Sections 17571–17572 shall be used.
- (c) If an employee grievance alleges the improper act or failure to act was due to discrimination in terms of race, color, sex, age, handicap, religious creed, national origin, ancestry, marital status or other categorization identified by statute; the employee shall be allowed to use either the applicable grievance procedure or the discrimination complaint procedure described in Section 17575. The employee shall not use both procedures for the same complaint.

Under either procedure the employee has the further right of appeal to the State Personnel Board.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Subarticle 1. Processing Employment Rights Appeals

#### § 17552. Initiation of Employment Rights Appeals.

Except as otherwise provided in Section 17567, all employment rights appeals shall be filed in writing with the State Personnel Board within 30 calendar days from the date of the action, or notification of action against which the appeal is made.

Appeals shall state the facts upon which they are based, and the relief requested in sufficient detail to enable the State Personnel Board to understand the nature of the proceeding and the parties concerned.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17553. Referral to Hearing Officer.

When there is filed with the State Personnel Board an employment rights appeal; such filing shall automatically operate as the reference of every such proceeding to the hearing officer for hearing, or investigation without hearing as appropriate; but no such reference shall preclude the State Personnel Board from recalling the proceeding for hearing or investigation by it. Any proceeding may be assigned by the State Personnel Board or its president to the hearing officer for hearing or investigation. In any case, when a proceeding has been assigned to the hearing officer, the hearing officer is the authorized representative of the State Personnel Board and is fully authorized and empowered to grant or refuse extensions of time, to set such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or these rules.

The State Personnel Board Hearing Officer shall mail to or serve on the respondent a copy of the appeal.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17554. Amended Notice of Disciplinary Action.

At any time before an employee's appeal is submitted to the State Personnel Board or its authorized representative for decision, the appointing authority may, with the consent of the Board, or its authorized representative serve on the employee and file with the Board an amended or supplemental notice of disciplinary action.

If the amended or supplemental notice presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a defense thereto, but he shall not be entitled to file a further appeal unless the State Personnel Board or its authorized representative so orders. Any objections to the amended or supplemental causes or allegations may be made orally at the hearing and shall be noted in the record.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17555. Notice of Hearings.

The employee and local agency shall be given written notice of hearing.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17556. Scope of Hearing Involving Convictions.

In the case of dismissal under the provisions of Section 17544(f), the scope of the appeal shall be limited to the issues of the nature of the offense and the jurisdiction of the court.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17557. Evidence Submitted in Hearing.

Oral evidence shall be taken only on oath or affirmation.

Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issue, even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence.

If appellants do not testify in their own behalf they may be called and examined as on cross–examination.

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

Hearsay evidence shall be admitted and may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a dismissal, suspension, or demotion unless it is the type of hearsay admissible over objection in a civil action. The rules of privilege shall be effective to the same extent to which they are now or may hereafter be recognized in civil actions.

Irrelevant and unduly repetitious evidence shall be excluded.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17558. Right of Representation.

The appellant and local agency may be represented by counsel or other representation.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17559. Subpoenas.

The State Personnel Board shall issue at the request of the parties, subpoenas and subpoenas duces tecum in accordance with the provisions of Section 1985 of the Code of Civil Procedure.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17560. Depositions.

The State Personnel Board may order the taking of depositions in the manner prescribed in Section 11511 of the Government Code.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17561. Reporting.

In all appeals involving dismissal or demotion the proceedings shall be recorded.

Proceedings involving other issues need not be recorded but either party may at its own expense provide a recorder for the hearing.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17562. Hearings Are Public.

All hearings shall be public except when the parties stipulate otherwise

At the request of either party and in the sound discretion of the hearing officer, witnesses who have not testified may be excluded from the hearing room until such time as they are called to testify.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17563. Basis for Decision.

Whenever the decision of the local agency is found to be supported by substantial evidence it shall be affirmed; provided, however, that the State Personnel Board may reduce the severity of the action and make such other orders as are just and proper under the circumstances.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17564. Proposed Decisions.

In all cases referred or assigned to the hearing officer for hearing or investigation, the hearing officer shall submit to the State Personnel Board a proposed decision in such form that it may be adopted as the decision of the State Personnel Board.

The proposed decision shall include findings of fact. The findings may be stated in the language of the pleadings or by reference thereto and shall include determination of all relevant issues presented. A copy of the proposed decision shall be filed with the State Personnel Board as a public record. Upon the filing of the proposed decision, the State Personnel Board may adopt it in its entirety; may take action in accordance with Section 17563; or may itself decide the case upon the record, including the transcript, with or without taking additional evidence, except in appals where no transcript shall be required, and where in the absence of a transcript the Board may act upon its own investigation of the facts.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17565. Rehearing.

Any party to the appeal, within 30 calendar days after service of a copy of the decision on such party, may apply for a rehearing by filing with the

State Personnel Board a written petition therefor. Within 30 calendar days after such filing, a copy of the petition shall be served upon the other party to the proceedings. Within 60 calendar days after such service of the petition for rehearing, the State Personnel Board itself shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within this 90–day period shall constitute a denial of the petition. If a rehearing is granted, the State Personnel Board may either rehear the case itself, decide the case on the pertinent parts of a prior hearing and such additional evidence and argument as the State Personnel Board shall in its discretion permit, or may refer the matter to a hearing officer. Note: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17566. Decision Becomes Final.

Unless proper application for rehearing is made, the decision on every Interagency Merit System appeal shall become final 30 calendar days after service of a copy of the decision on the parties to the proceedings. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17567. Use of Local Agency Process.

The State Personnel Board may permit use of a local agency procedure, rather than the procedures in Sections 17553–17566, to resolve an employment rights appeal; if such is requested by the employee and the local agency prior to the beginning of formal hearing officer proceedings. When the Board permits use of a local agency procedure for resolving an employment rights appeal, the following is required:

- (a) The appellant shall formally waive the right to decision by the State Personnel Board on a waiver form provided by the Executive Officer.
- (b) The resolution procedure to be used shall be an impartial procedure that meets the requirements of Section 17030(g).
- (c) The decision resulting from the local procedure shall be binding upon the parties to the dispute.

NOTE: Authority cited: Section 19801, Government Code. Reference: Section 19803, Government Code.

#### HISTORY

 Amendment of subsection (b) filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22). Grievance Procedures

#### Subarticle 2. Grievance Procedures

#### § 17570. Grievance Processing.

Grievances shall be defined and processed as provided in local memoranda of understanding, ordinances or resolutions applicable to employees in positions covered by these rules. If there is no such memorandum of understanding, ordinance or resolution for covered positions, the Interagency Merit System grievance procedure described in Sections 17571–17572 shall be used.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17571. General Provisions of Interagency Merit System Grievance Procedure.

- (a) A grievance exists whenever an employee feels adversely affected by any action or failure of action by the employee's appointing authority, a supervisor, or another employee in the same department.
- (b) Except in the informal part of the first level of review in the grievance procedure, a written decision shall be rendered to an employee at each level of review. The decision at each level, unless the time limit is extended by mutual agreement, shall be given within 10 calendar days of receipt of the grievance. An employee who is not satisfied with the decision may, within 10 calendar days after receiving such decision, submit the grievance to the next level of review.

If no agreement on extension of time for rendering a decision has been made, and if the decision has not been given within the stipulated time, an employee may submit the grievance to the next level of review within 10 calendar days of the date such decision was due.

Failure by an employee to submit the grievance to a level of review within the time limit, unless that limit is extended by mutual agreement, shall terminate the grievance process.

Any level of review may be omitted if it is jointly agreed to by the employee and the appointing authority.

(c) The grievance procedure shall consist of a maximum of four levels of review. Another person or body of persons may be substituted for any level of review if mutually agreed to by the employee and the appointing authority

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17572. Steps in the Interagency Merit System Grievance Procedure.

(a) First Level of Review. The employee grievance shall be discussed on an informal basis with the immediate supervisor within 21 calendar days from the date of the action or the employee's knowledge of the action causing the grievance. Every effort shall be made to resolve the grievance at this level and, if necessary, should include conferences among supervisory or administrative personnel.

In this first step of the grievance process, the immediate supervisor shall, at the time the verbal decision is rendered, advise the employee of the right to file a written grievance within 10 calendar days for further consideration.

If a grievance is not resolved informally between the employee and supervisor, a written grievance may be prepared. It should be on an appropriate form; shall be definitive, identify the action requested, and shall be submitted to the immediate supervisor for review and written response.

- (b) Second Level of Review. This level shall consist of any of the following persons who have been designated by the appointing authority to hear employee grievances:
  - (1) Second-line supervisor or administrator within the agency; or
  - (2) The agency personnel officer.
  - (c) Third Level of Review. This level shall be the appointing authority.
- (d) Final Level of Review. This level shall be the local governing board or its designated representative. The decision rendered at this level is the final administrative remedy provided for within the grievance procedure.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## § 17575. Alternate Process for Resolving Grievances Involving Allegated Discrimination.

If an employee grievance alleges the improper act or failure to act was due to discrimination in terms of race, color, sex, age, handicap, religious creed, national origin, ancestry, marital status, or other categorization identified by statute; the employee shall be allowed to use either the grievance procedure or the following discrimination complaint procedure. The employee shall not use both procedures for the same complaint.

- (a) First Step. The aggrieved employee may discuss the complaint informally with an Equal Employment Opportunity (EEO) Counselor. The EEO Counselor shall be a person trained in EEO procedures and counseling techniques to provide informal counseling on matters pertaining to discrimination. Such discussion and counseling shall be initiated within 21 calendar days of the alleged discriminatory action.
- (b) Second Step. No later than 10 calendar days following conclusion of informal counseling, the aggrieved employee may file a formal written discrimination complaint with an Equal Employment Opportunity (EEO) Investigator. The EEO Investigator shall be a person trained in EEO procedures and investigative techniques to provide formal investigation of matters pertaining to discrimination. The EEO Investigator shall submit to the appointing authority, within 21 calendar days, a formal written report covering the specific complaint, relief sought, findings of fact, and recommend action.
- (c) Final Step. If the aggrieved employee and appointing authority agree with the recommended action in the EEO Investigator's written report, and the appointing authority has the authority to implement it, it shall be implemented. Otherwise a decision on the formal complaint shall

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be made by the local governing board or its designated representative within 21 calendar days from the time it was filed with the governing board.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### HISTORY

1. Editorial correction of subsection (a) (Register 95, No. 40).

#### § 17576. Further Appeal of Grievances.

Regardless of whether the grievance was processed under Section 17570, 17572, or 17575, a grievance alleging discrimination or adverse treatment due to political affiliation may be appealed to the State Personnel Board if not satisfactorily resolved through local agency processes. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### Subarticle 3. Examination Appeals

#### § 17580. Selection Process Appeal Procedures.

The State Personnel Board Executive Officer shall establish procedures for the timely hearing of examination appeals prior to final review and decision by the State Personnel Board. Any correction in ratings shall not affect appointments which may have already been made from the eligible list.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17581. Processing of Examination Appeals.

Employees and applicants may appeal selection process decisions on the following grounds:

- (a) For alleged irregularity, discrimination, bias, or fraud in one or more steps in an examination, or
- (b) For alleged improper acts or circumstances resulting in erroneous interpretation and application, by the examiners, of the skills, knowledge and abilities considered to be essential for satisfactory performance in the class for which the candidate is being examined.

Appeals of decisions from selection procedures must be filed with the State Personnel Board within 30 calendar days after the date on which notification of the results of such procedure was mailed to the candidate. NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17582. Examination Material Available to Appellant.

Sufficient examination material shall be made available to an appellant to explain the basis for the examination decision, and to confirm the computation of the appellant's score. No access to examination items will be allowed if in the judgment of the State Personnel Board Executive

Officer such access would result in unfair advantage to a competitor in a future examination.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

## Article 9. Cooperation with Other Merit System Agencies

## § 17588. Certification from Eligible Lists of Other Merit Systems.

At the request of an Interagency Merit System appointing authority, and with the approval of the agency for which the eligible list was prepared, the State Personnel Board Executive Officer may authorize that appointing authority to use an existing eligible list for a comparable class established in conformity with these standards but under another recognized merit system.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

### § 17590. Transfer or Reinstatement from Other Merit Systems.

Upon the request of an Interagency Merit System appointing authority, a person who has held permanent status in another recognized merit system shall be eligible for reinstatement or transfer to an appropriate vacant position in the same class, comparable class or in a lower related class in the Interagency Merit System in accordance with standards established by the State Personnel Board Executive Officer. This section shall not be used for a class for which the receiving agency has a reemployment list.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

#### § 17592. Interagency Assignments.

For the purpose of training or to obtain maximum utilization of available staff, employees may be temporarily assigned or loaned between agencies. Each such temporary assignment or loan must be agreed to by the employee concerned and shall not initially exceed a period of two years. Extensions are subject to the approval of the State Personnel Board Executive officer. Employees from other jurisdictions will not gain status in the Interagency Merit System through such training assignments or loans. The assignment may be terminated by any of the parties involved at any time. Employees participating in such assignments shall be considered for all purposes of this Article and these regulations as employees of the agency from which they were loaned or assigned except that their salary may be paid as agreed upon by the participating agencies.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.

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# Barclays Official CALIFORNIA CODE OF REGULATIONS

## Title 2. Administration

Division 6. Fair Political Practices Commission

**Vol. 3** 



### **Division 6. Fair Political Practices Commission**

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## Division 6. Fair Political Practices Commission

(Originally Printed 1–11–75)

#### Chapter 1. General

## § 18109. Storage of Originals and Copies of Reports (81009). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 81009, Government Code.

#### HISTORY

- 1. New section filed 4–30–76; effective thirtieth day thereafter (Register 76, No. 18). For prior history of Chapter 1, see Register 75, No. 45.
- 2. Repealer filed 1-25-80; effective thirtieth day thereafter (Register 80, No. 4).

#### § 18110. Duties of Filing Officers—Campaign Statements.

- (a) It shall be the duty of a filing officer pursuant to Government Code section 81010(b) in connection with the filing of candidate and committee campaign statements pursuant to Chapter 4 or 5 of the Political Reform Act to determine whether required documents have been filed.
- (1) In order to fulfill his or her duty to determine whether required documents have been filed, if the filing officer is aware that a candidate or committee has an obligation to file a campaign statement and has failed to do so, the filing officer shall notify the candidate or committee of the obligation to file a statement.
- (2) In determining whether required documents have been filed, the filing officer shall not be required to conduct any investigation to determine whether a committee or candidate has an obligation to file a campaign statement. This subdivision is not intended to prevent the filing officer from performing such an investigation.
- (b) It shall be the duty of the filing officer pursuant to Government Code section 81010(b) in connection with the filing of candidate and committee campaign statements to determine whether original documents filed conform on their face with the requirements of the Political Reform Act and regulations adopted pursuant to the Act.
- (1) The filing officer, in determining whether campaign statements conform on their face with the Political Reform Act and the regulations adopted pursuant to the Act, shall not be required to:
- (A) Seek or obtain information to verify entries on a campaign statement
- (B) Examine previously filed statements, copies of statements filed, or statements filed in other jurisdictions in order to verify the accuracy of current statements.
- (C) Review copies of statements where the original is filed with another agency. This subdivision (1) is not intended to prevent the filing officer from performing the tasks specified in this subdivision.
- (2) In determining whether original documents filed conform on their face, the filing officer shall review:
- (A) All statements to insure that they contain the full name, residential or business address and phone number of the filer or if a committee is the filer, the name, street address and phone number of the committee and of the committee treasurer.
- (B) All statements to insure that they have been signed and dated by the proper person as outlined below:
- 1. Statements of recipient committees signed and dated by the treasurer, and statements of all other committees signed and dated by the filer or his or her designated agent.
- Statements of controlled committees signed and dated by the treasurer and the candidate or state measure proponent.
  - 3. Candidate statements signed and dated by the candidate.
- (C) All statements to insure that they are legible, are printed in ink or typewritten, and that readable reproductions can be made.
- (D) All statements to insure that beginning and closing dates for the statement which are prescribed by law are accurate.

- (E) All statements to insure that the following information is contained in the statement:
- 1. The total amount of contributions received during the period and the cumulative total amount of contributions. Government Code section 84211(a).
- 2. The total amount of expenditures made during the period and the cumulative total amount of expenditures. Government Code section 84211(b).
- 3. The total amount of contributions received from persons who have given \$100 or more. Government Code section 84211(c).
- 4. The total amount of contributions received from persons who have given less than \$100. Government Code section 84211(d).
- 5. The total amount of expenditures disbursed to persons who have received \$100 or more. Government Code section 84211(i).
- 6. The total amount of expenditures disbursed to persons who have received less than \$100. Government Code section 84211(j).
- 7. The balance of cash and cash equivalents on hand at the beginning and end of the period. Government Code section 84211(e).
- 8. For each person listed as contributor or lender of a cumulative amount of \$100 or more, the complete name, address, occupation and employer, if any (or name of business if described as self-employed), cumulative amount contributed, date and amount of contribution, and if the contribution is a loan, the interest rate for the loan. Government Code section 84211(f).
- 9. For each recipient committee listed as a contributor or lender of a cumulative amount of \$100 or more, in addition to the information specified in subdivision 8, above, the identification number assigned to the committee by the Secretary of State or, if no identification number has been assigned, the full name and address of the treasurer of the committee. Government Code section 84211(m).
- 10. For each person listed as a recipient of expenditures of \$100 or more during the period, the complete name of the payee, the address, the amount of each expenditure, a brief description of the consideration for which the expenditure was made and, if the statement indicates a person other than the payee provided the consideration, the complete name and address of the person providing the consideration. Government Code section 84211(k).
- 11. For each committee listed as a recipient of an expenditure of \$100 or more, in addition to the information specified in subdivision 10, above, the identification number assigned to the committee by the Secretary of State or, if no identification number has been assigned, the full name and address of the treasurer of the committee. Government Code section 84211(m).
- 12. If the statement is filed by a candidate, the name and street address of committees which are primarily formed to make contributions or expenditures on behalf of the candidate, along with the name, street address and phone number of the treasurer of each such committee and whether such committee is controlled by the candidate and the same information for any other committee controlled by the candidate. Government Code section 84211(p).
- 13. In a campaign statement filed by a candidate who is a candidate in both a state primary and general election, his or her controlled committee, or a committee primarily formed to support or oppose such a candidate, the total amount of contributions received and the total amount of expenditures made for the period January 1 through June 30 and the total amount of contributions received and expenditures made for the period July 1 through December 31. Government Code section 84211(n).
- (F) All statements to insure that there are no gross or readily apparent errors in arithmetical calculations.
- (c) It shall be the duty of the filing officer pursuant to Government Code section 81010(c) in connection with the filing of candidate and committee campaign statements:
- (1) To accept for filing any campaign statement which the Act requires to be filed with the filing officer.
- (2) To datestamp on the day of receipt, any campaign statement or report required to be filed with the filing officer.

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(3) In those cases where the filing officer discovers in his or her review of campaign statements that a candidate or committee has filed an incorrect, incomplete or illegible campaign statement or a campaign statement which cannot be reproduced, he or she shall promptly notify the candidate or committee of the error or omission. However, no notification is required in those cases in which the errors or omissions are minor ones which do not recur throughout the campaign statement. An error or omission is minor if it does not result in omission of the amount of an individual contribution or expenditure. An error or omission in connection with the identification of a donor or intermediary is minor if such person is identified by name and either street address, occupation, employer or principal place of business. An error or omission in connection with the identification of the recipient of an expenditure or person providing consideration for an expenditure is minor if such person is identified by name.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 81010, Government Code.

#### HISTORY

- 1. New section filed 3–31–78; effective thirtieth day thereafter (Register 78, No. 13).
- Amendment of subsection (b)(2)(E) filed 1-25-80; effective thirtieth day thereafter (Register 80, No. 4).
- 3. Amendment filed 1–9–81; effective thirtieth day thereafter (Register 81, No. 2).
- 4. Editorial correction of subsection (b)(2)(E) (Register 81, No. 9).
- 5. Amendment of section heading filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
- Amendment filed 7–14–83; effective thirtieth day thereafter (Register 83, No. 29).
- Amendment filed 11–13–85; effective thirtieth day thereafter (Register 85, No. 46.).
- 8. Editorial correction filed 12–13–85 (Register 85, No. 50). Ed. Note: No change in text
- 9. Amendment of subsection (c) filed 10–24–88; operative 11–23–88 (Register 88, No. 45).
- 10. Editorial correction of subsection (b)(2)(E)8.-9. (Register 96, No. 43).
- 11. Amendment of subsections (a)(2), (b)(2)(A), (b)(2)(B)1.-2., (b)(2)(E), (b)(2)(E)9., and (b)(2)(E)11., and repealer of subsection (b)(2)(F) and subsection relettering, filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 12. Amendment of subsection (a) filed 5–26–98; operative 5–26–98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- 13. Amendment filed 9–12–2002 as a change without regulatory effect. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 37).

#### § 18115. Duties of Filing Officers and Filing Officials— Statements of Economic Interests.

The filing officer is the person or agency which receives and retains original statements of economic interests (Section 87500). The duties of filing officers are set forth in subsection (a) of this regulation. Subsection (b) of this regulation describes the duties of agency officials who receive original statements of economic interests and are required to make and retain a copy of such statements and forward the original to the filing officer.

An official who is both a filing officer and an official who receives statements and forwards the originals to the filing officer will have duties under subsections (a) and (b) of this regulation.

- (a) Filing officers who are responsible for statements of economic interests shall:
- (1) Supply the necessary forms and manuals prescribed by the Fair Political Practices Commission;
- (2) Determine whether the proper statements have been filed and whether:
- (A) The cover sheet includes the name and address of the filer, the period covered and type of statement;
- (B) The summary page is completed, and the required schedules are attached as indicated;

- (C) All information is legible, and readable reproductions of the statement can be made.
- (3) Promptly notify the filer if a statement does not satisfy the requirements of subsection (a)(2).
- (4) Review the information contained in at least 20 percent of the statements which are filed on time, at least half of which must be selected on a random basis, and the information contained in all statements which are filed late, to determine whether:
- (A) The summary page is completed correctly, and all schedules applicable to the filer are either attached or checked "no reportable interests."
- (B) The attached schedules include all required descriptive information for each financial interest.
- (C) Information contained on one schedule suggests that required information is omitted on either that schedule or another schedule.
- (5) Promptly notify the filer if the review of the schedules indicates that the filing is incomplete or incorrect in any material respect.
- (6) Report apparent violations of the Political Reform Act to the appropriate agencies. An apparent violation exists when:
- (A) The filing officer knows or has reason to believe that the statement contains material inaccuracies or omissions;
- (B) A filer fails to file all or part of his statement or refuses to file all or part of his statement after reasonable notice has been provided by the filing officer.
- (7) Compile and maintain a current list of all statements filed with the office.
- (b) Agency officials who receive statements of economic interests and forward those statements, as required by Government Code Section 87500, to the filing officer shall:
- (1) Forward the statements to the filing officer no later than five days after the filing deadline or five days after receipt in the case of a statement filed late. The official shall indicate the date of the agency's receipt on the face of the statement and shall also make and retain a copy of each statement forwarded to the filing officer;
- (2) Supply the necessary forms and manuals prescribed by the Fair Political Practices Commission;
- (3) Notify the filing officer of the following events within ten days of their occurrence:
- (A) An election held in the jurisdiction, the names of the candidates, the persons elected, and the office to which each person was elected;
  - (B) A vacancy in an office;
  - (C) Any other event affecting filing obligations.
- (4) Notify the filing officer no later than February 1 of each year of the names and positions of every person whose statements must be forwarded to the filing officer;
- (5) Compile and maintain a current list of all statements forwarded to the filing officer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81010 and 87500, Government Code.

#### HISTORY

- 1. New Chapter 1 (Section 18115) filed 11–4–75; effective thirtieth day thereafter (Register 75, No. 45).
- 2. Amendment of section title filed 5-22-78; effective thirtieth day thereafter (Register 78, No. 21).
- Amendment filed 10-2-78; effective thirtieth day thereafter (Register 78, No. 40).
- Amendment filed 1–25–80; effective thirtieth day thereafter (Register 80, No. 4).
- Amendment of section heading and NOTE filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 6. Editorial correction of section heading filed 10-29-82 (Register 82, No. 44).
- 7. Amendment of subsection (a) filed 7-16-85; effective thirtieth day thereafter (Register 85, No. 29).

#### § 18116. Reports and Statements; Filing Dates.

Whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. This extension does not apply to late contribution reports required by Government Code Section 84203, late independent expenditure reports required by Government Code Section 84204, or notice by the contributor of a late in–kind contribution required by Government Code Section 84203.3.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82036, 82036.5, 84203 and 84204, Government Code.

#### HISTORY

- 1. New section filed 12–27–77; effective thirtieth day thereafter (Register 77, No. 53).
- 2. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 3. Amendment of subsections (b) and (c) filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
- Amendment of subsection (a) and repealer of subsection (a) designator and subsections (b) and (c) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

# § 18117. Duties of Filing Officers and Filing Officials — Effect of Non–Compliance on Filing and Disclosure Obligations.

The failure of a filing officer or filing official to comply with any duty or provide notice of any filing or disclosure obligation shall not affect the duty of a person to file statements and reports disclosing information as required by this title or any conflict of interest code enforceable under this title.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81010, 82015(b)(2)(B)(iii), 84101, 84103, 84108, 84200–84209, 84218, 84220, 84225, 84511, 84605, 85304, 85309, 85310, 85500, 86100–86117, 87200–87205, 87302 and 87302.6, Government Code.

#### HISTORY

1. New section filed 10–11–2005; operative 11–10–2005 (Register 2005, No. 41).

### Chapter 2. Definitions

### § 18200. Terms and References.

As used in this Division, the following terms have the following meanings:

- (a) "Act" refers to the Political Reform Act as set forth in Title 9 (commencing with Section 81000) of the Government Code.
- (b) "Regulation" refers to this Division, Division 6 of Title 2 of the California Code of Regulations, unless otherwise specified.
- (c) "Section" refers to the Government Code, unless otherwise specified.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81000, 83111 and 83112, Government Code.

### HISTORY

- Change without regulatory effect adding section filed 10–31–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 44).
- 2. Change without regulatory effect amending section heading and section filed 3-19-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 12).

### § 18202. Quasi-Legislative Administrative Action.

- (a) A proceeding of a state agency is not a quasi-legislative proceeding for the purposes of Government Code Section 82002 if it is any of the following:
- (1) A proceeding to determine the rights or duties of a person under existing laws, regulations or policies.
- (2) A proceeding involving the issuance, amendment or revocation of a permit or license.
- (3) A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.
- (4) A proceeding at which an action is taken involving the purchase or sale of property, goods or services by such agency.
- (5) A proceeding at which an action is taken which is ministerial in nature.
- (6) A proceeding at which an action is taken awarding a grant or contract.
  - (7) A proceeding involving the issuance of a legal opinion.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82002, Government Code.

#### HISTORY

- 1. New section filed 9–18–75; effective thirtieth day thereafter (Register 75, No. 38). For prior history of Chapter 2, see Register 75, No. 27.
- 2. Amendment filed 11–10–83; effective thirtieth day thereafter (Register 83. No. 46).

### § 18204.5. Substantial or Regular—Local Government Employees. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82039 and 86105–86109, Government Code.

#### HISTORY

- 1. New section filed 3–3–75 as an emergency; effective upon filing (Register 75, No. 10).
- 2. Repealer filed 6-30-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 27).

### § 18208.5. Lobbyist Firms—Definitions and Reporting Requirements. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 86108, Government Code.

### HISTORY

- 1. New section filed 4–10–75 as an emergency; effective upon filing (Register 75, No. 15).
- 2. Repealer filed 8-1-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 31).

### § 18215. Contribution.

- (a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:
- (1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or
- (2) Received by or made at the behest of the following or any agent thereof:
  - (A) A candidate;
  - (B) A controlled committee;
- (C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or
- (D) An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union or corporation.
  - (b) The term "contribution" includes:
- (1) Any payment made to a person or organization other than a candidate or committee, when, at the time of making the payment, the donor knows or has reason to know that the payment, or funds with which the payment will be commingled, will be used to make contributions or expenditures. If the donor knows or has reason to know that only part of the payment will be used to make contributions or expenditures, the payment shall be apportioned on a reasonable basis in order to determine the amount of the contribution.

There shall be a presumption that the donor does not have reason to know that all or part of the payment will be used to make expenditures or contributions, unless the person or organization has made expenditures or contributions of at least one thousand dollars (\$1,000) in the aggregate during the calendar year in which the payment occurs, or any of the immediately preceding four calendar years.

- (2) A candidate's own money or property used on behalf of his or her candidacy.
- (3) Any goods or services received by or behested by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public.
- (c) Notwithstanding any other provision of this section, the term "contribution" does not include:
- (1) An expenditure made at the behest of a candidate in connection with a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, if the expenditure does not constitute express advocacy.

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- (2) Volunteer personal services or payments made by a person for his or her own travel expenses, if such payments are made voluntarily without any understanding or agreement that he or she will be repaid.
- (3) A payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office, if the total cost of the meeting or fundraising event is \$500 or less, exclusive of the fair rental value of the premises.
- (4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:
  - (i) Does not contain express advocacy;
- (ii) Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and
- (iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent.
- (5) A payment made by a candidate or committee for another candidate to attend the paying candidate's or committee's fundraiser.
- (6) A payment made by a candidate for a communication publicizing his or her endorsement by another candidate, provided that the communication does not expressly advocate the nomination or election of the endorsing candidate or the defeat of an opponent of the endorsing candidate.
- (7) A payment made by a ballot measure committee for a communication in which the ballot measure supported or opposed by the committee is endorsed or opposed by a candidate, and the communication does not expressly advocate the nomination or election of the endorsing candidate or the defeat of an opponent of the endorsing candidate.
  - (8) A payment by:
- (i) A regularly published newspaper, magazine or other periodical of general circulation which routinely carries news, articles, and commentary of general interest for the cost of publishing a news story, commentary or editorial; or
- (ii) A federally regulated broadcast outlet for the cost of broadcasting a news story, commentary, or editorial.
- (9) A payment by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This exception applies only to the costs regularly incurred in publication and distribution. Any additional costs incurred are contributions, including, but not limited to, expanded circulation; substantial alterations in size, style, or format; or a change in publication schedule, such as a special edition.
- (10) A payment for a debate or other forum sponsored by a nonpartisan organization in which at least two candidates appearing on the ballot for the same elective office were invited to participate.
- (11) A payment for a debate or other forum in which the proponent of a ballot measure and at least one opponent, or their respective representatives, were invited to participate in equal numbers.
- (12) A payment for a debate or other forum sponsored by a political party or affiliated committee in which a majority of the candidates for that party's nomination were invited to participate.
- (13) A payment made by a bona fide service, social, business, trade, union or professional organization or group for reasonable overhead expenses associated with the organization's regularly scheduled meeting at which a candidate or an individual representing either side of a ballot measure speaks, if the organization pays no additional costs in connection with the speaker's attendance.
- (14) A payment received by, directed by, or made at the behest of a candidate for personal purposes. [NOTE: Such payments may constitute gifts, income, or honoraria, and as such may be limited or prohibited, under other provisions of the Act. See also Title 2, California Code of Regulations, Section 18941.1 regarding payments for food.]
- (15) A payment made by a candidate for a communication in support of or opposition to a ballot measure, if the communication features the endorsing candidate or clearly identifies him or her as the sponsor of the

communication. [NOTE: this exception does not include a monetary contribution from a candidate or his or her controlled committee to a ballot measure committee.]

- (16) A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov't Code § 82047) except a candidate or other individual (see Gov't Code § 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.
- (d) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015 and 85312, Government Code.

### HISTORY

- 1. New section filed 4–30–76; effective thirtieth day thereafter (Register 76, No. 18).
- 2. Amendment of subsection (e) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
- 3. Amendment filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8)
- 4. Amendment filed 7–12–84; effective thirtieth day thereafter (Register 84, No. 28).
- 5. Relettering of subsection (d) to subsection (e) and new subsection (d) filed 11–26–90; operative 12–26–90 (Register 91, No. 1).
- Amendment filed 11–7–95; operative 11–7–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 45).
- 7. Editorial correction of subsection (b)(1) (Register 96, No. 43)
- 8. New subsection (c)(16) and amendment of NOTE filed 1–29–97 as an emergency; operative 1–29–97. Submitted to OAL for printing only (Register 97, No. 5)
- Permanent regulation filed 6–26–97; operative 6–26–97. Submitted to OAL for printing only (Register 97, No. 26).

### § 18215.1. Contributions; When Aggregated.

- (a) Definitions. For purposes of determining when contributions are aggregated under the provisions of this title:
  - (1) "Entity" means any person, other than an individual;
  - (2) "Majority owned" means an ownership of more than fifty percent.
- (b) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual;
- (c) If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated;
- (d) Contributions made by entities that are majority owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their decision to make contributions.

Comment: See section 18428 regarding aggregation of contributions under Chapter 4 and Chapter 5 of this title. Also see *In re Lumsdon* (1976) 2 FPPC Ops. 140 and *In re Kahn* (1976) 2 FPPC Ops. 151.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82015, Government Code.

### HISTORY

 New section filed 4-4-2006; operative 5-4-2006 (Register 2006, No. 14). For prior history, see Register 97, No. 46.

### § 18215.2. Monetary Contributions, When "Accepted." [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84211 and 85301, Government Code.

### HISTORY

- 1. New section filed 8–27–97 as an emergency; operative 8–27–97. Submitted to OAL for printing only (Register 97, No. 35).
- 2. Repealed by operation of law 12-26-97 (Register 2001, No. 28).
- Change without regulatory effect adding NOTE filed 8-31-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

### § 18216. Enforceable Promise to Make a Payment.

- (a) A person who makes an enforceable promise to make a payment to or at the behest of a candidate or committee makes a contribution to the candidate or committee, except to the extent the person receives full and adequate consideration, and unless it is clear from the surrounding circumstances that the enforceable promise is not made for political purposes.
- (b) A person makes an "enforceable promise to make a payment," as that term is used in subdivision (a), if he or she:
  - (1) Guarantees a loan.
  - (2) Furnishes security for a loan.

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- (3) Endorses a loan.
- (4) Cosigns a loan.
- (5) Makes and delivers a post-dated check.
- (6) Establishes a line of credit at a bank or other commercial lending institution for a candidate or committee.
- (7) Promises in writing to make a payment for specific goods or services, and the candidate or committee, based on the promise, expends specific funds or enters into an enforceable contract with a third party.
- (c) A person does not make an "enforceable promise to make a payment," as that term is used in subdivision (a), if he or she signs a pledge card or similar document, agrees to make installment payments through wire transfer, credit card transaction, debit account transaction or similar electronic payment or otherwise agrees, orally or in writing, to make a future payment except as provided in subdivision (b).
- (d) A candidate or committee shall report receipt of an enforceable promise to make a payment using the forms furnished by the Commission. This reporting shall be consistent with the requirements for reporting of contributions contained in chapter 4 (commencing with section 84100) of title 9 of the Government Code.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82015, Government Code.

### **HISTORY**

- New section filed 2–18–88; operative 3–19–88 (Register 88, No. 9). For history of former Section 18216, see Register 86, No. 10.
- Amendment of subsections (b), (c) and (d) filed 11-6-2006; operative 12-6-2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 45).

### § 18217. Nonprofit Organization as Controlled Committee.

- (a) A nonprofit organization, as defined in subdivision (f), shall be considered a controlled committee, if both of the following apply:
- (1) A candidate, his or her agent, or any committee he or she controls, exercises significant influence over the actions and decisions of the organization, or acts jointly with the organization in connection with the making of expenditures.
- (2) The organization qualifies as a committee under Government Code section 82013(a), and the organization is operated for political purposes. For purposes of this regulation, and organization is "operated for political purposes" if either of the following applies:
- (A) The organization receives or expends funds for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or the qualification or passage of any measure.
- (B) The organization makes contributions to candidates or their controlled committees.
- (b) For purposes of subdivision (a)(1), a nonprofit organization which is tax—exempt under section 501 of the Internal Revenue Code, and which is not an organization described in section 527 of the Internal Revenue Code, is presumed not to be significantly influenced by a candidate, his or her agent, or any committee he or she controls, if the organization complies with all of the factors set forth below:
- (1) The candidate is not substantially involved in the day-to-day operations of the organization, and the organization is controlled by a board of directors with 3 or more members, two-thirds of whom are not:
  - (A) Candidates;
- (B) Agents, campaign staff, employees, or persons otherwise under the control of a candidate; or
- (C) Brothers, sisters, parents, children, spouses, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law or fathers-in-law of a board member who is a candidate.
- (2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (b)(2) the term "name of the candidate" means the candidate's first and last name or some other unambiguous reference to the candidate.

- (c) For purposes of subdivision (a)(2), a nonprofit organization which is tax-exempt under section 501 of the Internal Revenue Code, and which is not an organization described in section 527 of the Internal Revenue Code, is presumed not to be operated for political purposes if the organization complies with all of the factors set forth below:
  - (1) The organization does not make contributions to candidates.
- (2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (c)(2) the term "name of the candidate" means the candidate's first and last name or some other unambiguous reference to the candidate.
- (3) The organization does not spend funds in excess of the amount permitted under section 501(h) of the Internal Revenue Code to influence or attempt to influence legislative action.
- (4) The organization does not spend funds to influence or attempt to influence the qualification or passage of any measure in an amount sufficient to qualify the organization as a committee under section 82013 of the Government Code.
- (5) This subdivision (c) shall not be construed to prevent the organization from forming a separate and independent political committee which is not controlled by any person described in subdivision (b)(1)(A)–(C).
- (d) The presumptions set forth in subdivisions (b) and (c) can be rebutted by clear and convincing evidence that, notwithstanding compliance with all of the factors set forth in subdivisions (b) and (c), the organization is controlled by a candidate and operated for political purposes.
- (e) A person who makes a donation to a nonprofit organization which is tax-exempt under section 501 of the Internal Revenue Code, and which is not an organization described in section 527 of the Internal Revenue Code, in reliance upon the organization's tax-exempt status, is not making a contribution unless the person knows or has reason to know that the organization is operated for political purposes.
- (f) For purposes of this regulation, "nonprofit organization" means an organization which is characterized as an exempt organization under section 501 of the Internal Revenue Code, but which is not an organization formed or existing primarily for political purposes.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82016, Government Code.

### HISTORY

1. New section filed 8-31-90; operative 9-30-90 (Register 90, No. 43).

### § 18225. Expenditure.

- (a) An expenditure is any monetary or nonmonetary payment made for political purposes. A payment is made for political purposes if it is:
- (1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or
  - (2) Made by:
- (A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder;
  - (B) A controlled committee;
- (C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or
- (D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.
- (b) "Expenditure" includes any monetary or non-monetary payment made by any person, other than those persons or organizations described in subsection (a), that is used for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure.
  - (1) "Clearly identified" has the following meaning:

- (A) A candidate is clearly identified if the communication states his name, makes unambiguous reference to his office or status as a candidate, or unambiguously describes him in any manner.
- (B) A group of candidates is clearly identified if the communication makes unambiguous reference to some well—defined characteristic of the group, even if the communication does not name each candidate. A communication that clearly identifies a group of candidates and expressly advocates their election or defeat is reportable as an expenditure, but the expenditure need not be allocated among all members of the class or group on the campaign statement reporting the expenditure.
- (C) A measure that has qualified to be placed on the ballot is clearly identified if the communication states a proposition number, official title or popular name associated with the measure. In addition, the measure is clearly identified if the communication refers to the subject matter of the measure and either states that the measure is before the people for a vote or, taken as a whole and in context, unambiguously refers to the measure.
- (D) A measure that has not qualified to be placed on the ballot is clearly identified if the communication refers to the subject matter of the measure and to the qualification drive.
- (2) A communication "expressly advocates" the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," "sign petitions for" or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.
  - (3) Reporting expenditures.
- (A) The amount of an expenditure reportable pursuant to this subsection shall include all costs directly attributable to the communication, including but not limited to salaries, production, postage, space or time purchased, agency fees, printing and any additional administrative or overhead costs attributable to the communication. The expenditure does not include any of the regular ongoing business overhead which will be incurred in similar amounts regardless of the communication.
- (B) When printed or broadcast communications circulate outside the State of California, the expenditure may be calculated on the basis of the fraction of the total cost attributable to circulation within California.
- (C) Costs directly traceable to the communication are reportable when the communication is made, or when payments are made in connection with the development, production or dissemination of the communication, whichever is earlier.
- (D) The costs of printing and distributing petitions, recruiting, training and paying expenses of petition circulators, and other costs incurred in connection with qualification of a measure are reportable "expenditures."
- (4) Notwithstanding the provisions of this subsection, the term expenditure does not include costs incurred for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates or the qualification, passage or defeat of a clearly identified measure or measures by:
- (A) A regularly published newspaper, magazine or other periodical of general circulation which routinely carries news, articles and commentary of general interest.
  - (B) A federally regulated broadcast outlet.
- (C) A regularly published newsletter or regularly published periodical, other than those specified in paragraph (b)(4)(A), whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This paragraph applies only to the costs regularly incurred in publishing and distributing the newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or substantially altered in style, size or format, the additional costs are expenditures.
- (c) Any payment used to make contributions, as defined in Government Code Section 82015 and 2 Cal. Adm. Code Section 18215, is an expenditure.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82025, Government Code.

#### HISTORY

- 1. New section filed 4–30–76; effective thirtieth day thereafter (Register 76, No. 18)
- 2. Amendment of subsection (c)(3)(D) filed 5–22–78; effective thirtieth day thereafter (Register 78, No. 21).
- 3. Amendment filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- 4. Editorial correction of subsection (b)(4)(C) filed 4–28–83 (Register 83, No. 18).
  5. Amendment of subsection (a) filed 3–8–84; effective thirtieth day thereafter (Register 84, No. 10).

### § 18225.4. Independent Expenditures; When Aggregated.

- (a) Definitions. For purposes of determining when independent expenditures are aggregated under the provisions of this title:
  - (1) "Entity" means any person, other than an individual;
  - (2) "Majority owned" means an ownership of more than fifty percent.
- (b) The independent expenditures of an entity, whose independent expenditures are directed and controlled by any individual, shall be aggregated with independent expenditures made by that individual and any other entity whose independent expenditures are directed and controlled by the same individual;
- (c) If two or more entities make independent expenditures that are directed and controlled by a majority of the same persons, the independent expenditures of those entities shall be aggregated;
- (d) Independent expenditures made by entities that are majority owned by any person shall be aggregated with the independent expenditures of the majority owner and all other entities majority owned by that person, unless such entities act independently in their decisions to make independent expenditures.

Comment to Section 18225.4: See section 18428 regarding the aggregation of independent expenditures under Chapter 4 and Chapter 5 of this title. Also see *In re Lumsdon* (1976) 2 FPPC Ops. 140 and *In re Kahn* (1976) 2 FPPC Ops. 151.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82025, Government Code.

### HISTORY

- 1. New section filed 5–2–95; operative 5–2–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 18).
- Amendment of subsections (b)–(c) filed 7–5–95; operative 7–5–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 27).
- 3. Amendment filed 4-4-2006; operative 5-4-2006 (Register 2006, No. 14).

### § 18225.7. Made at the Behest of.

- (a) "Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code section 82031.
- (b) Expenditures "made at the behest of" a candidate or committee include expenditures made by a person other than the candidate or committee, to fund a communication relating to one or more candidates or ballot measures "clearly identified" as defined at Title 2, California Code of Regs. section 18225(b)(1), which is created, produced or disseminated,
- (1) After the candidate or committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication, or
- (2) After discussion between the creator, producer or distributor of a communication, or the person paying for that communication, and the candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is agreement on any of these topics.
- (c) An expenditure is presumed to be made at the behest of a candidate or committee if it is:
- (1) Based on information about the candidate's or committee's campaign needs or plans provided to the expending person by the candidate or committee, or



- (2) Made by or through any agent of the candidate or committee in the course of the agent's involvement in the current campaign, or
- (3) For a communication relating to a clearly identified candidate or ballot measure when:
- (A) The person making the expenditure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for that same election, or
- (B) The communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate or committee.
- (d) An expenditure is not made at the behest of a candidate or committee merely when:
- (1) A person interviews a candidate on issues affecting the person making the expenditure, or
- (2) The person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agents, or
- (3) The person making the expenditure has made a contribution to the candidate or committee, or
- (4) The person making the expenditure is responding to a general, non-specific request for support by a candidate or committee, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure, or
- (5) The person making the expenditures has invited the candidate or committee to make an appearance before the person's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure, or
- (6) A person informs a candidate or committee that the person has made an expenditure, provided that there is no other exchange of information, not otherwise available to the public, relating to details of the expenditure, or
- (7) An expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.
- (e) Notwithstanding any other provision of this section, if two or more committees exchange information between or among themselves, subsequent expenditures by each committee shall not, merely by reason of that exchange, be considered to be "made at the behest of" the other committee(s), where the committees are (i) all general purpose committees, (ii) all committees primarily formed to support or oppose the same candidate or candidates, or (iii) all committees primarily formed to support or oppose the same measure or measures.
- (f) Throughout this section the terms "candidate" and "committee" include their agents, when the agent is acting within the course and scope of his or her agency. The term "expenditure" refers to a payment defined as an "expenditure" by Government Code section 82025 and Title 2, California Code of Regs. section 18225. A determination that an expenditure has been "made at the behest of" a candidate or committee does not establish that the expenditure is a "contribution" as defined by Government Code section 82015 or Title 2, California Code of Regs. section 18215. However, expenditures governed by Title 2, California Code of Regs. section 18550.1 may be treated as contributions pursuant to the provisions of that section.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025 and 82031, Government Code.

### HISTORY

- 1. New section filed 11–7–95; operative 11–7–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 45).
- Amendment of section and Note filed 4-9-2003; operative 4-9-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 15).

### § 18227. Filing Officer.

Every filing officer shall assign to a specific official the responsibility for receiving and forwarding or retaining reports filed pursuant to Government Code Sections 84215 and 87500.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82027, 84215 and 87500, Government Code.

#### HISTORY

- 1. New section filed 9–29–76; effective thirtieth day thereafter (Register 76, No. 39).
- 2. Amendment filed 5-22-78; effective thirtieth day thereafter (Register 78, No. 21)
- 3. Amendment filed 1–25–80; effective thirtieth day thereafter (Register 80, No. 4)
- 4. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).

### § 18228. Gifts—Payments for Food, Accommodations or Transportation. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015 and 82028, Government Code.

#### HISTORY

- 1. New section filed 12-7-88; operative 1-6-89 (Register 88, No. 52).
- 2. Renumbering of former section 18228 to section 18950.4 filed 1–27–93; operative 2–26–93 (Register 93, No. 5).

### § 18229. Inclusion of Registered Domestic Partners.

For purposes of this title and implementing regulations, the term "spouse" shall include registered domestic partners recognized by state law

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 82029, 82030, 82030.5, 84211, 87103, 87460, 87461 and 89511, Government Code.

#### HISTORY

1. New section filed 12–31–2004; operative 1–1–2005 pursuant to Government Code section 11343.4 (Register 2004, No. 53).

### § 18230. Doing Business in the Jurisdiction.

A person is "doing business in the jurisdiction" if that person has business contacts on a regular or substantial basis with a person who maintains a physical presence in the jurisdiction of a public official. "Business contacts" include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. "Business contacts" do not include marketing via the Internet, telephone, television, radio, or printed media.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82030, 82034 and 87209, Government Code.

### **HISTORY**

New section filed 1–10–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2)

# § 18232. Salary and Reimbursement for Expenses or Per Diem Received from a State, Local, or Federal Government Agency.

For purposes of Government Code section 82030(b)(2), the following definitions apply:

- (a) "Salary" from a state, local, or federal government agency means any and all payments made by a government agency to a public official, or accrued to the benefit of a public official, as consideration for the public official's services to the government agency. Such payments include wages, fees paid to public officials as "consultants" as defined in California Code of Regulations, Title 2, section 18701(a)(2), pension benefits, health and other insurance coverage, rights to compensated vacation and leave time, free or discounted transportation, payment or indemnification of legal defense costs, and similar benefits.
- (b) "Per diem" received from a state, local, or federal government agency means payment of a fixed sum of money, accruing daily to a public official when the public official is required to incur increased daily living expenses.
- (c) "Reimbursement for expenses" received from a state, local, or federal government agency means a payment to a public official, in compensation for otherwise uncompensated actual expenses incurred or to be incurred within 60 days by the public official in the course of his or her official duties.

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COMMENT: Cross—references: For the definition of "income," see Government Code section 82030. For the definition of "public official," see Government Code section 82048.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82030, 87100. 87102.5, 87102.6, 87102.8 and 87103, Government Code.

### HISTORY

- New section filed 1-17-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law. 3 Civil C010924, California Court of Appeal, Third Appellate District. nonpublished decision. April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- 2. Amendment filed 1-16-2002; operative 2-15-2002 (Register 2002, No. 3).

### § 18233. Leasehold Interest.

The terms "interest in real property" and "leasehold interest" as used in Government Code Section 82033 shall not include the interest of a tenant in a periodic tenancy of one month or less.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82033 and 87206, Government Code.

#### HISTORY

- New section filed 12-1-77; effective thirtieth day thereafter (Register 77, No. 49).
- 2. Amendment of subsection (b)(3) filed 11–10–83; effective thirtieth day thereafter (Register 83, No. 46).
- Amendment of subsection (a) filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).
- 4. Amendment filed 1–8–86; effective thirtieth day thereafter (Register 86, No. 2).

### § 18234. Interests in Trusts.

- (a) An official has an economic interest in the pro rata share of the interests in real property, sources of income, and investments of a trust in which the official has a direct, indirect, or beneficial interest of 10 percent or greater.
- (b) For purposes of this section, the interests of the official include those of the official, spouse, and dependent children regarding interests in real property and investments and those of the official and spouse regarding sources of income.
- (c) For purposes of determining whether an official has an economic interest in interests in real property, sources of income, and investments of a trust, the official has a direct, indirect, or beneficial interest in a trust if the official is:
  - (1) A trustor and:
  - (A) Can revoke or terminate the trust;
- (B) Has retained or reserved any rights to the income or principal of the trust, or retained any reversionary or remainder interest; or
- (C) Has retained or reserved any power of appointment, including but not limited to the power to change the trustee, or the power to amend, alter or designate, either alone or in conjunction with anyone else, the person or persons who shall possess or enjoy the trust property or income.
  - (2) A beneficiary and:
  - (A) Presently receives income; or
- (B) Has an irrevocable future right to receive income or principal. For purposes of this subsection, an individual has an irrevocable future right to receive income or principal if the trust is irrevocable, unless one of the following applies:
- (i) Powers exist to consume, invade, or appoint the principal for the benefit of beneficiaries other than the official and such powers are not limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries; or
- (ii) Under the terms of the trust, someone other than the official can designate the persons who shall possess or enjoy the trust property or income.
- (d) For the purposes of this section, an official does not have a direct, indirect, or beneficial interest in a trust solely because the official is a trustee or co-trustee. However, income received for the performance of trustee services is income as defined in Government Code Section 82030. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82029, 82030, 82033 and 82034, Government Code.

#### HISTORY

- New section filed 4–17–78; effective thirtieth day thereafter (Register 78, No. 16).
- 2. Amendment filed 8–16–84; effective thirtieth day thereafter (Register 84, No. 33).
- 3. Amendment filed 2–18–99; operative 2–18–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 8).

### § 18235. Reporting Interests in a Blind Trust (82030, 82033 and 82034).

(a) Notwithstanding the provisions of 2 Cal. Adm. Code Section 18234(c), a filer who has a direct, indirect or beneficial interest in a blind trust which meets the standards set forth in subsection (b) is not required to disclose the pro rata share of the trust's interests in real property or investments, or income deriving from any such interests or investments, if those interests or investments are acquired by the trustee after the trust complies with subsection (b).

However, nothing in this section relieves the filer from his or her obligation (1) to disclose the pro rata share of the trust's interests in real property or investments, or income deriving from any such interests or investments, if the interests or investments were originally transferred into the trust, and (2) to disqualify himself or herself from participating in decisions which may have a foreseeable and material effect on financial interests which are reportable under this regulation.

- (b) A blind trust must comply with the following conditions:
- (1) the trustee must be a disinterested party other than the filer's spouse, child, parent, grandparent, grandchild, brother, sister, parent—in—law, brother—in—law, sister—in—law, aunt, uncle, or first cousin or the spouse of any such person;
- (2) the trustee must be given complete discretion to manage the trust including, but not limited to, the power to dispose of and acquire trust assets without consulting or notifying the filer;
- (3) the trustee must be required to notify the filer of the date of disposition and value at disposition of any original investments or interests in real property so that information can be reported on the filer's next Statement of Economic Interests;
- (4) the trustee must be prohibited from disclosing to the filer any information concerning the replacement assets except for information required under this subsection or the minimum tax information which lists only the totals of taxable items from the trust and does not describe the source of any individual item of income; and
- (5) if the trust is revoked while the filer is a public official, or if the filer learns of any replacement assets of the trust, the filer must file an amendment to the most recent Statement of Economic Interests disclosing the date of revocation and the previously unreported pro rata share of the trust's interests in real property or investments or income deriving from any such interests in real property or investments and disqualify himself or herself, as necessary. For purposes of this regulation, any replacement assets of which the filer learns shall thereafter be treated as though they were original assets of the trust.
- (c) If a filer has an interest in a blind trust which meets the requirements of subsection (b), the filer shall indicate the existence of the blind trust, its date of creation and the name of the trustee on the Statement of Economic Interests and attach a copy of a statement signed by the trustee, under penalty of perjury, that he or she has not revealed any information to the filer, except what is required under subsections (b)(3) and (4), and that the trust is in conformance with subsection (b).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82030-82034, Government Code.

### HISTORY

- 1. New section filed 5–22–78; effective thirtieth day thereafter (Register 78, No. 21).
- Amendment of subsection (a) filed 8-25-78; effective thirtieth day thereafter (Register 78, No. 34).

### § 18236. Parent, Subsidiary, Otherwise Related Business Entity. [Repealed]

NOTE: Authority cited: Section 83112, Government Code, Reference: Section 82034, Government Code.

#### HISTORY

- 1. New section filed 8–16–84; effective thirtieth day thereafter (Register 84, No. 33).
- 2. Repealer filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 3. Editorial correction of HISTORY 2 (Register 2000, No. 25).

### § 18238.5. Definition of Lobbying Firm; Individual Contract Lobbyist.

- (a) A business entity is a lobbying firm pursuant to Government Code Section 82038.5(a)(2) if it receives or becomes entitled to receive at least \$5.000 in compensation in any calendar quarter for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity engages in direct communication for the purpose of influencing legislative or administrative action.
  - (b) The definitions in Section 18239(d) apply to this section.
- (c) An "individual contract lobbyist" as used in the definition of a "lobbying firm" pursuant to Government Code Section 82038.5, does not include an individual lobbyist if:
  - (1) The lobbyist contracts exclusively with one lobbying firm;
- (2) The lobbyist's certification is included with the lobbying firm's registration statement; and
- (3) The lobbyist does not file a lobbying firm registration statement independent of the lobbying firm.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82038.5, Government Code.

#### HISTORY

- New section filed 5–28–86 as an emergency; operative 5–28–86 (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86.
- 2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38)
- 3. Amendment filed 7-9-87; operative 8-8-87 (Register 87, No. 29).
- 4. New subsection (c) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).

### § 18239. Definition of Lobbyist.

- (a) Introduction.
- (1) If an individual engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action on behalf of any person other than his or her employer, apply Government Code section 82039 and subdivision (b) of this regulation to determine if the individual is a lobbyist.
- (2) If an individual engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action *only* on behalf of his or her employer, apply Government Code section 82039 and subdivision (c) of this regulation to determine if the individual is a lobbyist.
- (b) A lobbyist is an individual who receives or becomes entitled to receive \$2,000 or more in compensation in any calendar month for engaging in direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.
- (c) A lobbyist is an individual who spends one-third or more of the time, in any calendar month, for which he or she receives compensation from his or her employer, engaging in direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.
  - (d) Definitions.
  - (1) "Administrative testimony" means either of the following:
- (A) Influencing or attempting to influence administrative action by acting as counsel in, appearing as a witness in, or providing written submissions, including answers to inquiries, which become part of the record of any regulatory or administrative agency proceeding:
- (i) Which is conducted as an open public hearing for which public notice is given;
- (ii) Of which a record is created in a manner which makes possible the creation of a transcript; and

- (iii) With respect to which full public access is provided to such record or transcript and to all written material which is submitted to become part of the record.
- (B) Any communication made at a public hearing, public workshop, public forum, or included in the official record of any proceeding, as defined in Government Code Section 82002(b) or (c), before the California Public Utilities Commission.
- (2) "Compensation" means any economic consideration, other than reimbursement for reasonable travel expenses, i.e., expenses for transportation plus a reasonable sum for food and lodging.
- (3) "Direct communication" means appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any qualifying official, either personally or through an agent who acts under one's direct supervision, control or direction.
- (A) Direct communication does not include any request for or provision of purely technical data or analysis to an administrative agency by a person who does not otherwise engage in direct communication for the purpose of influencing legislative or administrative action.
- (B) For the purpose of determining whether an individual qualifies as a lobbyist pursuant to subdivisions (b) or (c), an individual does not engage in "direct communication" when he or she meets or speaks with a qualifying official in the company of a registered lobbyist retained by the individual or individual's employer or by a bona fide trade association or membership organization of which the individual or individual's employer is a bona fide member.
- (4) "Influencing legislative or administrative action" means communicating directly or taking any other action for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.
  - (5) "Qualifying official" means:
  - (A) Any elected state official;
  - (B) Any legislative official;
- (C) Any appointed, elected, or statutory member or director of any state agency;
- (D) Any staff member of any state agency who makes direct recommendations to the persons listed in subdivision (5)(C) of this subdivision, or who has decisionmaking authority concerning such recommendations

NOTE: Authority cited: Section 83112, Gov. Code. Reference: Section 82039, Gov. Code.

### HISTORY

- 1. New chapter 2 (section 18239) filed 6–30–75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 27).
- Amendment of subsection (e) filed 9-18-75; effective thirtieth day thereafter (Register 75, No. 38).
- 3. Amendment filed 11–24–78; designated effective 1–1–79 (Register 78, No. 47).
- Amendment filed 8–27–81; effective thirtieth day thereafter (Register 81, No. 35).
- 5. Amendment filed 1–25–83; effective thirtieth day thereafter (Register 84, No. 4).
- Amendment filed 5-7-84 as an emergency; effective upon filing (Register 84, No. 19). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-4-84.
- Certificate of Compliance transmitted to OAL 7-17-84 and filed 8-21-84 (Register 84, No. 33).
- 8. Amendment of section and NOTE filed 3–15–94; operative 3–15–94 (Register 94, No. 11).
- 9. Repealer and new subsections (a)–(c), new subsection (d)(3)(A) designator and new subsection (d)(3)(B) filed 7–28–97; operative 7–28–97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only (Register 97, No. 31).
- 10. Editorial correction of subsection (d)(1)(C) (Register 2002, No. 22).
- 11. Amendment filed 6-17-2002; operative 7-17-2002 (Register 2002, No. 25).

### § 18239.5. Lobbyist Employer.

When a lobbyist or lobbying firm is employed by a bona fide association, including any bona fide federation, confederation or trade, labor or membership organization, that association is a lobbyist employer. The members of the association are not lobbyist employers under Government Code Section 82039.5 merely because of such membership.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82039.5, Government Code.

### HISTORY

- New section filed 5–28–86 as an emergency, operative 5–28–86; (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86.
- 2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).

### § 18241. Cumulation Period for Mass Mailings (82041.5). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82041, Government Code.

#### HISTORY

- 1. New section filed 2–20–76; effective thirtieth day thereafter (Register 76, No. 8).
- 2. Repealer filed 2-17-82; effective thirtieth day thereafter (Register 82, No. 8).

### § 18249. State Agency (82004, 86100-86300).

An agency is a state agency within the provisions of Government Code Sections 82004 and 86100–86300 only if all the following criteria are met:

- (a) The agency is authorized by statute, executive order or the California constitution.
- (b) At least one voting member is an elected state officer or is appointed by an elected state officer or an agency official or a state agency.
- (c) The agency is financed in part by any state funds or is subject to appropriation in the state budget.
- (d) An area larger than one county is included in its jurisdiction. NOTE: Authority cited: Sections 82113 and 83112, Government Code. Reference: Sections 82004, 82049 and 86100–86300 Government Code.

#### HISTORY

- 1. New section filed 9–18–75; effective thirtieth day thereafter (Register 75, No. 38).
- 2. Amendment filed 12–26–80; effective thirtieth day thereafter (Register 80, No. 52).
- 3. Editorial Correction (Register 81, No. 7).

## Chapter 3. Fair Political Practices Commission

# § 18306. Compensation and Reimbursement for Members of the Fair Political Practices Commission. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83106, Government Code.

### HISTORY

- 1. New section filed 3–31–77; effective thirtieth day thereafter (Register 77, No. 14). For prior history of Chapter 3, see Register 75, No. 27.
- 2. Amendment of subsection (a) filed 6–21–79; effective thirtieth day thereafter (Register 79, No. 25).
- 3. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 4. Repealer filed 7-14-83; effective thirtieth day thereafter (Register 83, No. 29).

### § 18307. Honoraria for Members of the Fair Political Practices Commission.

Members of the Fair Political Practices Commission shall not accept honoraria or fees for speeches, public appearances, interviews or similar services arising primarily out of the members' positions on the Commission. For purposes of this regulation, honoraria or fees include only payments which exceed actual expenses incurred.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83106, Government Code.

### HISTORY

- 1. New section filed 3–31–77; effective thirtieth day thereafter (Register 77, No. 14).
- 2. Amendment of section heading filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).

### § 18310. Meetings.

(a) Regular Meeting. There shall be regular meetings of the Commission.

- (b) Special meetings may be called by the Chairman, by resolution of the Commission or by written request of any two commissioners addressed to the Chairman or Executive Director.
- (c) Requests for Notice. Notice of meetings and notice of cancellation or changes in the starting time and/or date of any meeting shall be mailed to persons who request such notice in writing.
- (d) Changes. The Chairman for any reasonable cause may cancel any regular meeting or change the starting time and/or date of any meeting to another time and date.
- (e) Recording. Commission meetings shall be recorded. Any person may record the proceedings in any reasonable manner.
- (f) Minutes. The Commission shall keep full and accurate minutes of its meetings and make them available to the public.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83110, Government Code.

### HISTORY

- 1. New Chapter 3 (Sections 18310 and 18315) filed 6–30–75 as a emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 27).
- 2. Amendment of subsection (b) filed 2-20-76; effective thirtieth day thereafter (Register 76, No. 8).
- Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 4. Amendment filed 7–14–83; effective thirtieth day thereafter (Register 83, No. 29)

### § 18312. Rulemaking Procedure.

- (a) Definitions.
- (1) Administrative Procedure Act: All references in this regulation to the "Administrative Procedure Act" are to the provisions of the "Administrative Procedure Act" that were in effect as of June 4, 1974 (former Government Code title 2, division 3, part 1, chapter 4.5, section 11371 et seq.).
- (2) California Administrative Register: All references in this regulation to the "California Administrative Register" are to the California Administrative Register as set forth in Government Code section 11409 as that section existed on June 4, 1974, or to any successor publication of the Office of Administrative Hearings, as defined in subdivision (a)(4) of this regulation.
- (3) Notice: The notice of the adoption, repeal, or amendment of any Commission regulation shall include all of the following:
- (A) A statement of the time, place, and nature of the proceedings;
- (B) Reference to the authority under which the regulation is proposed and reference to particular code sections or other provisions of law which are being implemented, interpreted, or made specific;
- (C) Either the express terms or an informational summary of the proposed action.
- (D) A cost estimate prepared as prescribed by the Department of Finance
- (4) Office of Administrative Hearings: All references in this regulation to the "Office of Administrative Hearings" are to the Office of Administrative Hearings as set forth in Government Code sections 11371 et seq., as those sections existed on June 4, 1974, and to any state agency that succeeds the Office of Administrative Hearings, including the Office of Administrative Law.
- (5) Regulatory Action: "Regulatory action" includes the adoption, repeal, or amendment of any Commission regulation.
- (6) Trade or Industry Publication: "Trade or industry publication" includes the California Administrative Register.
  - (b) Adoption, Amendment, and Repeal of Regulations.
- (1) The Commission or Commission staff may schedule a public "interested persons" meeting to solicit comment from the public on any topic within the jurisdiction of the Commission, in advance of either a prenotice hearing, if any, or an adoption hearing on a proposed regulation. Announcement of this meeting shall be posted on the Commission website and mailed (either in tangible form or electronically) to every person who has filed a request to be included on the applicable mailing list and to such other persons or groups the Commission believes may be interested in the matter.

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- (2) The Commission or Commission staff may schedule a prenotice hearing on any regulation that will be the subject of Commission regulatory action in the future. The purpose of the prenotice hearing is to permit the Commission to consider and accept public comment regarding regulatory action proposed by the Commission staff. Any regulatory action to be considered at a prenotice hearing shall be publicized consistent with Government Code sections 11120–11132.
- (3) At least 30 days prior to the adoption, amendment, or repeal of any regulation, notice shall be provided as follows:
- (A) Publication in a newspaper of general circulation or in a trade or industry publication as prescribed by the Commission.
  - (B) Filing with the Rules Committee of each house of the Legislature.
- (C) Mailing (either in tangible form or electronically) to every person who has filed a request for notice thereof with the Commission. At the discretion of the Commission, notice may be mailed to other persons or groups the Commission believes may be interested in the proposed action.
- (D) Delivered to the Office of Administrative Hearings for publication in the next issue of the California Administrative Register as prepared by that office.

The failure to mail notice to any person as provided in section 11423 as that section existed on June 4, 1974, shall not invalidate any action taken by the Commission.

- (4) The Commission shall consider the regulatory action on or after the date and time designated in the notice, and shall afford interested persons an opportunity to comment. Written comments should be submitted to the Commission no later than 12:00 p.m. of the business day preceding the day of the hearing to afford them adequate time to fully consider the comments. Any regulatory action to be considered shall be publicized consistent with Government Code sections 11120–11132.
- (5) Where consideration of Commission regulatory action is continued to another meeting date, announcement of the change in date shall be posted on the door of the hearing room or announced at the Commission meeting. No additional notice pursuant to subdivision (b)(2) of this regulation is required.
- (6) The Commission or Commission staff may schedule additional Interested Persons Meetings, Prenotice Hearings, or Adoption Hearings on any given item.
- (7) Once the Commission has approved the adoption, repeal, or amendment of any Commission regulation, the Commission shall submit to the Office of Administrative Hearings, for filing with the Secretary of State, one certified copy of any regulation adopted, repealed, or amended with a citation to the statutory authority pursuant to which the regulation was adopted, and four additional copies of the regulation. The Commission shall also submit one certified copy of the regulation to the Rules Committee of each house of the Legislature.
- (8) The Commission shall retain a rulemaking file pertaining to each Commission regulatory action. The file shall contain the record of the hearing at which the Commission took the regulatory action and other materials pertinent to the regulatory action.
- (c) Adoption of Emergency Regulations. The Commission may adopt, amend, or repeal regulations on an emergency basis. The procedures set forth below, and not the procedures contained in subdivision (b) of this regulation, shall apply to Commission emergency regulatory action.
- (1) In order to adopt an emergency regulation, or to make an emergency amendment or repeal of a regulation, the Commission shall make a written finding of emergency, which shall include a statement of facts constituting the emergency and a statement that the Commission's regulatory action is necessary for the immediate preservation of the public peace, health and safety, or general welfare.
- (2) The Commission shall file a copy of the emergency regulation and the documents set forth in subdivision (c)(1) of this regulation with the Office of Administrative Hearings, to be filed with the Secretary of State, and shall file a copy with the Rules Committee of each house of the Legislature.

- (3) Unless otherwise provided by the Commission in a written instrument filed with, or as part of, the regulation or order of repeal, any emergency regulatory action shall become effective upon filing and shall remain in effect for 120 days.
- (4) The Commission may make the emergency regulation, amendment, or repeal permanent pursuant to subdivision (b) of this regulation. Where the Commission makes an emergency regulatory action permanent pursuant to subdivision (b) of this regulation prior to the expiration of the 120 days set forth above, the Commission shall transmit to the Office of Administrative Hearings and the Rules Committee of each house of the Legislature a certification that the action has been made permanent.
  - (d) Review by the Office of Administrative Hearings.
- (1) The Office of Administrative Hearings shall review any Commission regulation subject to Commission regulatory action for compliance with the form and style requirements of the Secretary of State.
- (2) If the Commission's regulatory action complies with the prescribed form and style requirements of the Secretary of State, the Office of Administrative Hearings shall file the regulation, amendment, or repeal promptly with the Secretary of State.
  - (e) Effective Date of Commission Regulatory Actions.
- (1) Commission regulatory actions shall become effective 30 days after filing with the Secretary of State, except for the following:
- (A) Where the Commission provides in a written instrument filed with, or as part of, the regulation or order of repeal, a specific effective date, the regulatory action shall be effective on that date.
- (B) Any emergency regulatory action shall become effective upon filing with the Secretary of State and the Rules Committee of each house of the Legislature pursuant to subsection (c)(2) of this regulation, unless subsection (e)(1)(A) of this regulation applies.
- (C) Regulations prescribing the Commission's organization or procedures shall become effective upon filing with the Secretary of State, unless subsection (e)(1)(A) or (e)(1)(B) of this regulation applies.

COMMENT: On March 6, 1991, in the case of Fair Political Practices Commission v. Office of Administrative Law and Linda Stockdale Brewer, Sacramento County Superior Court, Case No 512795 (affirmed by Court of Appeal, Third District (April 27, 1992), Case No. C010924 [unpub. opn.]), the court determined that he Fair Political Practices Commission's procedures for adopting, amending, or repealing regulations are subject only to those provisions of the Administrative Procedure Act in effect on June 4, 1974, which was the date on which the voters adopted the Political Reform Act of 1974. This regulation is therefore based on the requirements of the provisions of the Administrative Procedure Act existing on that date. On June 4, 1974, the pertinent provisions of the Administrative Procedure Act were located in former Government Code, Title 2, Division 3, Part 1, Chapter 4.5, section 11371 et seq.

NOTE: Authority cited: Sections 81014 and 83112, Government Code. Reference: Sections 11371 et seq., Government Code, as those sections existed on June 4, 1974; Sections 81013, 81014, and 83112, Government Code; Fair Political Practices Commission v. Office of Administrative Law and Linda Stockdale Brewer, Sacramento County Superior Court, Case No. 512795 (affirmed by Court of Appeal, Third District (April 27, 1992), Case No. C010924 [unpub. opn.]).

### HISTORY

- 1. Repealer and new section filed 2–5–93; operative 2–5–93 (Register 93, No. 6). For prior history, see Reg. 88, No. 41.
- 2. Editorial correction of HISTORY 1 (Register 2001, No. 34).
- 3. New subsections (b)(1) and (b)(6), subsection renumbering, and amendment of newly designated subsections (b)(2), (b)(3)(C), (b)(4) and (b)(5) filed 2-24-2003; operative 2-24-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).
- 4. Amendment of section and Note filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18313. Forms and Manuals.

- (a) The Commission shall maintain a list of persons interested in its forms and manuals.
- (b) No later than 30 days prior to considering a new form or manual, or a revision or supplement to an existing form or manual, the Commission shall notify everyone on its interested persons lists and make the new

or revised documents available for review. The changes shall be clearly noted. The Commission may make the form, manual, revision or supplement available for review by posting it on the Commission's website, or sending it by electronic mail or postal service mail to interested persons.

- (c) The form, manual, revision or supplement shall appear on the next regular meeting agenda of the Commission for adoption.
- (d) At that meeting, the Commission may, if three commissioners agree:
- (1) Adopt the form, manual, revision or supplement with or without discussion.
- (2) Make changes to the form, manual, revision or supplement and adopt it as modified.
  - (3) Reject the form, manual, revision or supplement.
  - (4) Schedule an interested persons meeting.
- (e) For greater outreach and accessibility, certain of the Commission's most widely used forms or manuals may, at the discretion of the Commission, be translated into Spanish. In the event of an inconsistency between the English version and the translation, the English version shall control, and this will be stated on the translated forms or manuals.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83113, Government Code.

#### HISTORY

- 1. New section filed 10–28–96; operative 10–28–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 44).
- Amendment of subsection (b) and new subsection (e) filed 4–10–2003; operative 4–10–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 15).

### § 18315. Special Meetings. [Repealed]

NOTE: Authority cited: Section 83112, Government Code.

### HISTORY

- 1. Repealer filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
- 2. Change without regulatory effect adding Note filed 8–31–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

### § 18316.5. Application of Government Code Section 83116.5.

- (a) The Commission will not apply Government Code Section 83116.5 to find a violation of this title by a person who provides incorrect advice interpreting any provision of this title which causes the advisee to violate this title under any of the following circumstances:
- (1) Government Employees or Contractors. If the person is an employee of or under contract to a state or local government agency and is giving advice interpreting the provisions of this title as part of the person's government contract or employment.
- (2) Private Sector Filers. If the person is not exempted by subdivision (1), and the person has filing or reporting obligations under this title, if either of the following applies:
- (A) There is no direct relationship between the advice given and the duties or activities of the position for which the person has filing or reporting obligations; or the client being advised is not the client for whom the filing occurs; or
- (B) If the person's conduct in giving the advice was not grossly negligent. "Grossly negligent" means that the person giving an incorrect interpretation failed both to diligently research the subject related to the advice given and to use his or her informed judgment in providing the advice, and the advice was clearly erroneous.

A person will be deemed to have "diligently researched" the subject related to the advice given if he or she has reviewed the applicable provisions of this title and the regulations, opinions, and manuals of the Commission, including the compilation of such documents contained on the agency website at www.fppc.ca.gov, as well as any applicable reported appellate court decisions and the California Code of Regulations.

(3) Attorneys in Private Capacity. If the person is not a government employee or contractor, as defined in subdivision (a)(1), or a private sector filer, as defined in subdivision (a)(2), and the person is an active member of the State Bar of California whose only service in connection with the violation was providing legal advice and who was not also engaged

in the planning, organizing, or directing of an activity from which the violation occurred. "Legal advice" means the rendering of oral or written advice including the preparation of documents and reports incidental to the rendering of such advice, but shall not include the preparation of any report or document required to be filed under this title by the person providing the advice.

(b) This regulation is not applicable where a person renders advice which is intended to result in a violation of this title. Furthermore, nothing in this regulation shall be construed to exempt a person from liability for a violation of any other provision of this title.

<sup>1</sup>All references to "this title" are references to Title 9, Sections 81000–91015 of the Government Code.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83116 and 83116.5, Government Code.

### HISTORY

- 1. New section filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
- Amendment of subsection (a)(2)(B) filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18319. Delegation of Authority.

Except as otherwise provided, any authority imposed upon the Executive Director by regulations adopted by the Fair Political Practices Commission may be delegated in writing to any member of the Commission staff or any person contracting with the Commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83108, Government Code.

#### HISTORY

- 1. New section filed 11–2–78; effective thirtieth day thereafter (Register 78, No. 44).
- 2. Amendment of section heading filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).

### § 18320. Requests for Opinions.

- (a) Opinion requests may be submitted to the Commission by any person whose duties under the Act are in question or by that person's representative.
- (1) The identity of the person whose duties are in question shall be provided with the opinion request. If the opinion request is submitted by the representative of several persons similarly situated, the identity of at least one such person shall be provided with the opinion request.
- (2) The immunity provided by Government Code section 83114 shall extend only to the person or persons identified in the opinion request.
- (b) Opinion requests shall present all material facts as concisely as possible and shall state the question or questions based on the facts.
- (c) The Commission staff shall maintain a master file containing all opinion requests. This file shall be open to public inspection.
- (d) The Executive Director shall determine whether to grant or deny opinion requests.
- (e) Within 14 days after the request is submitted, the person making the opinion request shall be notified in writing of the decision of the Executive Director. If the opinion request is denied, the notification shall state the reason for the denial and shall advise the person submitting the request of his right to appeal to the Commission pursuant to 2 Cal. Code Regs. section 18321.
- (f) Among the criteria upon which denial of an opinion request may be based are the following:
  - (1) The question raised is covered by Commission regulations.
- (2) The question raises no substantial question of interpretation and, therefore, requires only a routine reply more appropriately made by staff.
- (3) The person who made the request does not have sufficient interest (standing) in the question to justify an opinion being issued.
- (4) The question is hypothetical. However, opinion requests may be granted if the hypothetical facts stated represent an intended course of conduct which is contingent on the Commission's opinion.
- (5) The question is overbroad in that it asks for an interpretation of the Act in general terms.

- (6) The request does not present material facts and does not state a question based on the facts presented.
- (7) The question is outside the scope of the Political Reform Act. NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114, Government Code.

### HISTORY

- 1. New section filed 8-1-75; effective thirtieth day thereafter (Register 75, No. 31).
- 2. Repealer and new section filed 5–10–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 20).
- 3. Amendment of section heading filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 4. Amendment filed 7–14–83; effective thirtieth day thereafter (Register 83, No. 29)
- 5. Amendment of subsection (d) filed 6-29-84; effective thirtieth day thereafter (Register 84, No. 26).
- Change without regulatory effect amending subsections (a)(2) and (e) filed 10-6-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 41).

### § 18321. Review of Requests Denied by the Executive Director.

Any member of the Commission or any interested person may request a review of an opinion request denied by the Executive Director at the next meeting of the Commission following issuance of the denial. If a majority of the Commission approves the granting of an opinion request, the denial shall be rescinded, the person submitting the opinion request shall be notified in writing, and the opinion shall be issued as provided in 2 Cal. Code Regs. sections 18322 and 18324.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114, Government Code.

### HISTORY

- 1. New section filed 8-1-75; effective thirtieth day thereafter (Register 75, No. 31).
- 2. Repealer and new section filed 5–10–76 as an emergency; effective upon filing Certificate of Compliance included (Register 76, No. 20).
- 3. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44)
- Change without regulatory effect amending section filed 10–6–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 41).

### § 18322. Procedures for Issuing Opinions.

When the Commission has agreed to issue an opinion, the following procedures shall apply:

- (a) The Commission shall hold a hearing on the opinion request.
- (b) The Commission staff shall prepare a memorandum which discusses the issues and includes any staff recommendations. At least two weeks prior to the hearing on the opinion request, the staff memorandum shall be provided to the members of the Commission, the Attorney General, the Franchise Tax Board, the Secretary of State, the person requesting the opinion, and other interested persons and shall be made available to the public.
- (c) Any interested person may submit memoranda, briefs, arguments or other relevant material regarding the opinion no later than 5 days prior to the scheduled hearings on the opinion request. An original and five copies of briefs or arguments shall be submitted unless the person submitting the material declares he is financially unable to supply copies.
- (d) The person requesting the opinion may present oral testimony at the hearing on the opinion request. Any other interested person may, upon request, be permitted to present oral testimony.
- (e) The Commission shall adopt the opinion at a public meeting. Prior to the meeting, a draft of the opinion shall be provided to the members of the Commission, the Attorney General, the Franchise Tax Board, the Secretary of State, the person requesting the opinion, and other interested persons and shall be made available to the public.
- (f) The time limits in this section may be waived or extended by the Commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114, Government Code.

#### HISTORY

- 1. New section filed 8-1-75; effective thirtieth day thereafter (Register 75, No. 31).
- Repealer and new section filed 5-10-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 20).
- 3. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 4. Amendment filed 7–14–83; effective thirtieth day thereafter (Register 83, No. 29).
- 5. Amendment filed 6–29–84; effective thirtieth day thereafter (Register 84, No. 26).
- 6. Amendment filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).

### § 18323. Hearing on Draft Opinions (83114). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114, Government Code.

### HISTORY

- 1. New section filed 8-1-75; effective thirtieth day thereafter (Register 75, No. 31).
- Repealer and new section filed 5-10-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 20).
- Repealer and new section filed 7–28–76; effective thirtieth day thereafter (Register 76, No. 31).
- 4. Repealer filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).

### § 18324. Opinions.

- (a) Opinions adopted by the Commission shall be effective upon adoption and shall be published along with any dissenting or concurring opinions by Commissioners submitted within thirty days after the adoption.
- (b) The time for the effective date or for the publication of an opinion may be shortened or extended by the Chairman, subject to appeal by any interested person to the Commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114(a), Government Code.

#### HISTORY

- 1. New section filed 8-1-75; effective thirtieth day thereafter (Register 75, No. 31).
- Repealer and new section filed 5-10-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 20).
- 3. Repealer and new section filed 7–28–76; effective thirtieth day thereafter (Register 76, No. 31).
- 4. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).

### § 18325. Time Periods for Preparing Opinions (83114). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114, Government Code.

### **HISTORY**

- 1. New section filed 8–1–75; effective thirtieth day thereafter (Register 75, No. 31).
- Repealer and new section filed 5-10-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 20).
- 3. Repealer filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).

### § 18326. Petition for Rehearing.

- (a) Within 14 days after the adoption or rejection of a formal opinion by the Commission, the person who submitted the opinion request, a Commissioner or the Executive Director may petition the Commission to grant a rehearing. The petition, if submitted by the person who submitted the opinion request, shall be in writing and shall set forth, with specificity, the reasons for the request.
- (b) Whenever the Commission grants a petition for rehearing, the Commission shall suspend the opinion pending the rehearing.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114(a), Government Code.

### HISTORY

- 1. New section filed 3–30–76; effective thirtieth day thereafter (Register 76, No. 14)
- 2. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 3. Amendment of subsection (a) filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations

only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18327. Voting Requirements for Formal Action by the Commission.

Except as otherwise provided by regulation, the concurring votes of at least three Commissioners shall be required to authorize any formal action by the Commission.

- (a) Formal action includes, but is not limited to: the adoption of opinions, regulations or resolutions; the granting of petitions for rehearing; the approval of manuals or forms; and the issuance of any decision, order or declaration pursuant to Government Code Section 83116.
- (b) Formal action does not include decisions: to approve conflict of interest codes; to hear testimony; to convene, adjourn or recess a meeting; or to conduct discussions.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83107–83117, Government Code.

#### HISTORY

- 1. New section filed 4–30–76; effective thirtieth day thereafter (Register 76, No. 18).
- Amendment filed 11-2-78; effective thirtieth day thereafter (Register 78, No. 44).
- 3. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44)
- 4. Amendment filed 5-18-87; operative 5-18-87 (Register 87, No. 21).

### § 18329. Formal Written Advice and Informal Assistance.

- (a) The Commission will assist persons in complying with the Political Reform Act. The Commission will make every reasonable effort to provide formal written advice pursuant to Government Code Section 83114(b) or informal assistance without unnecessary delay and in sufficient time to facilitate compliance with the Act.
  - (b) Formal Written Advice.
- (1) Formal written advice may be requested in writing pursuant to Government Code Section 83114(b) by any person whose duties under the Act are in question or by that person's authorized representative.
- (2) Requests for formal written advice will not be acted upon unless the following requirements are met:
- (A) The name, title or position, and mailing address of the person whose duties are in question are provided. In addition, if the request is submitted by an authorized representative, it shall contain a specific statement that such authorization has been made.
- (B) All the facts material to the consideration of the question or questions presented have been provided in a clear and concise manner.
- (3) The time period specified in Government Code Section 83114(b) does not commence until the requirements of subsection (2) have been satisfied.
- (4) If a formal written advice request does not meet the requirements in subsection (2) the requestor shall promptly be notified of that fact in writing and shall be provided with a copy of this regulation.
- (5) When a request for formal written advice is received which complies with the requirements in subsection (2) the request shall promptly be acknowledged in writing. In addition, the acknowledgement shall provide the requestor with the name of the staff person to whom the request has been assigned, the staff person's office phone number, and the date on which the period specified in Government Code Section 83114(b) expires. If the request is from an authorized representative, a copy of the foregoing acknowledgement shall also be sent to the person on whose behalf the advice is being requested. If the request is received directly from a member of an agency a copy of the request and the acknowledgement may also be sent to the agency's counsel and/or the head or clerk of the agency.
- (6) With the exception of advice that a person need not disclose specific private economic interests, copies of the advice request and the formal written advice shall be public records. Summaries of the advice provided may be published from time to time in the Commission's Bulletin newsletter.
- (7) Formal written advice provided pursuant to Government Code Section 83114(b) does not constitute an Opinion of the Commission is-

- sued pursuant to Government Code Section 83114(a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code Section 83114(b) is limited to the requestor and to the specific facts contained in the formal written advice.
- (8) Subsection (a) notwithstanding, the Commission may decline to give formal written advice. The requestor shall be notified if the request for formal written advice is declined. Formal written advice may be declined in any of the following circumstances:
  - (A) The requestor is seeking advice relating to past conduct.
- (B) The requestor is seeking advice about another person's duties under the Act and has not been authorized to do so by that person.
- (C) It appears that the material facts provided in the request may be inaccurate. incomplete, or in dispute.
- (D) The request does not present a question under the Political Reform Act, or is purely hypothetical.
- (E) The request presents issues requiring a policy interpretation best made through a Commission Opinion under Government Code Section 83114(a) or by adoption of a regulation pursuant to Government Code Section 83112.
- (F) A response rendering formal written advice would be inappropriate or otherwise not in the public interest.
- (9) A request for formal written advice under Government Code Section 83114(b) and this regulation may be treated as a request for an Opinion under Government Code Section 83114(a), or as a request for informal assistance under subsection (c).
  - (c) Informal Assistance.
- (1) Informal assistance may be requested by any person whose duties under the Act are in question or by that person's authorized representative. In addition, informal assistance may be requested by any person with a duty to advise other persons relating to their duties or actions under the Act. Informal assistance may also be requested by any agency whose members or employees are subject to the provisions of the Act.
- (2) Informal assistance may be requested or rendered orally or in writing.
- (3) Informal assistance rendered pursuant to this regulation does not provide the requestor with the immunity set forth in either Government Code Section 83114(a) or (b).
- (4) The Commission may decline to provide informal assistance or may limit such assistance to the explanation, in general terms, of the requirements of the Act in any of the following circumstances:
- (A) Assistance or advice is being sought regarding past conduct, unless the advice or assistance sought is related to possible amendment of previous reports filed by the person requesting the advice.
  - (B) The requestor is seeking advice anonymously.
- (C) Assistance or advice is being sought regarding the duties of another person and the requestor does not appear to be authorized to make the request as the person's representative, or does not provide the identity of the person on whose behalf the assistance is being sought.
  - (D) The question presented is purely hypothetical.
- (E) The question presented is too complex or is otherwise inappropriate for resolution by informal assistance and should be resolved by formal written advice or an Opinion.
- (F) The facts presented are insufficient or too vague to render specific informal assistance or do not appear to present a question under the Act.
- (G) Rendering informal assistance would be inappropriate or otherwise not in the public interest.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83114(b), Government Code.

### HISTORY

- New section filed 5-10-76 as an emergency; effective upon filing (Register 76, No. 20).
- 2. Certificate of Compliance filed 7-28-76 (Register 76, No. 31).
- 3. Repealer and new section filed 3–31–77; effective thirtieth day thereafter (Register 77, No. 14).
- 4. Amendment of subsections (c)–(g) filed 11–2–78; effective thirtieth day thereafter (Register 78, No. 44).

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- 5. Amendment of section heading filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 6. Amendment of subsection (g) filed 7–14–83; effective thirtieth day thereafter (Register 83, No. 29).
- Repealer and new section filed 7–16–85; effective thirtieth day thereafter (Register 85, No. 29).

### § 18329.5. Commission Advice Procedure — Government Code Sections 87300–87306.

- (a) The Commission shall not render formal written advice or informal assistance regarding the interpretation of an agency's conflict of interest code or the application of that code to a specific individual unless the following criteria are satisfied:
- (1) The individual, agency, or authorized representative requesting advice must comply with all the requirements of 2 Cal. Code Regs. section 18329 regarding requests for formal written advice or informal assistance; and
  - (2) The Commission is the Code Reviewing Body.

Where the Commission is the code reviewing body for the conflict of interest code in question, the individual or his or her authorized representative requesting the advice or assistance must first request a determination from the agency adopting the conflict of interest code; or

- (3) The Commission is not the Code Reviewing Body.
- (A) Where the Commission is not the code reviewing body for the conflict of interest code in question, and the requesting party is an individual or his or her authorized representative, he or she must first request a determination from the agency and the code reviewing body for such conflict of interest code.
- (B) Where the Commission is not the code reviewing body for the conflict of interest code in question, and the requesting party is an agency, the agency must first request a determination from the code reviewing body for such conflict of interest code.
- (b) The Commission may, upon request, provide technical assistance to an individual regarding technical compliance with his or her reporting requirements under the individual's current conflict of interest code.
- (c) The Commission may, upon request, provide advice or technical assistance to a party for the purpose of determining whether that party is an agency as defined in Government Code sections 82041 and 82049, and is therefore required to adopt and promulgate a Conflict of Interest Code pursuant to Government Code Section 87300. The Commission may also, upon request, provide advice or assistance to an agency concerning which positions should be designated in the agency's Conflict of Interest Code through application of 2 Cal. Code Reg. section 18701. However, a request by an agency to be relieved of the duty to adopt a Conflict of Interest Code may only be processed as a request for exemption pursuant to 2 Cal. Code Reg. section 18751.
- (d) Section 87200: "Other Public Officials Who Manage Public Investments"
- (1) Notwithstanding subdivision (a) above, the Commission may provide advice or assistance to an individual concerning whether he or she is subject to Government Code section 87200 at any time.
- (2) When the Commission determines that an individual is not a "public official who manages public investments" pursuant to Government Code section 87200, the individual's agency or code reviewing body must then determine whether that individual has filing obligations pursuant to Chapter 7 of the Act. The agency or code reviewing body may request advice or assistance in making that determination pursuant to the procedures in subdivision (a) above.
  - (e) Requests.

A requestor may be asked to provide the following information when requesting advice or assistance pursuant to this regulation:

- (1) A copy of all pertinent agency determinations regarding an individual's obligations under Chapter 7 of the Act.
  - (2) A copy of an individual's employment contract;
  - (3) A copy of an individual's duty statement;
  - (4) A copy of the applicable conflict of interest code; and
  - (5) Any other pertinent information.

COMMENT: An individual potentially subject to a conflict of interest code may petition the agency to amend its code. An individual may ap-

peal a denied petition to the code reviewing body and may also seek judicial review of an action taken by the code reviewing body (Government Code sections 87307 and 87308). The code reviewing body has the authority to modify or suspend the disclosure obligations pending resolution of the appeal (2 Cal. Code Regs. section 18737).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83114(b) and 87300–87306, Government Code.

#### HISTORY

- New section filed 6-12-2003; operative 6-12-2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 24)
- New subsection (c) and subsection relettering filed 12–29–2005; operative 1–28–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 52).

# § 18350. Moscone Governmental Conflict of Interest Act. Disclosure of Economic Interests by Fair Political Practices Commission and Staff. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 3700–3710, Government Code.

### HISTORY

- 1. New Chapter 5 (Section 18350) filed 5–30–75 as an emergency; effective upon filing (Register 75, No. 22).
- 2. Certificate of Compliance filed 8-14-75 (Register 75, No. 33).
- 3. Repealer filed 9-28-76; effective thirtieth day thereafter (Register 76, No. 40).

### § 18351. Conflict of Interest Code of the Fair Political Practices Commission.

(a) The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard model Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Fair Political Practices Commission.

Designated employees shall file statements of economic interests with the Fair Political Practices Commission which will make the statements available for public inspection and reproduction. (Gov. Code Section 81008.) Statements for all designated employees will be retained by the Fair Political Practices Commission.

### (b) Appendix

Designated Positions	Disclosure Category
EXECUTIVE OFFICE Executive Director Communications Director Government Affairs Director Executive Fellow Consultant	1 1 1 3 *
LEGAL DIVISION General Counsel FPPC Counsel Political Reform Consultant Staff Services Analyst/Legal Analyst	1 1 3 4
ENFORCEMENT DIVISION Division Chief Assistant Division Chief Chief Investigator	1 1

Assigned

Assigned

Category

3

3

Disclosure

Designated Positions

FPPC Counsel Investigator Accounting Sp

Accounting Specialist Political Reform Consultant

Staff Services Analyst/Associate Governmental Program Analyst

TECHNICAL ASSISTANCE DIVISION

Division Chief Assistant Chief Manager, Filing Officer Programs Political Reform Consultant

ADMINISTRATION DIVISION

Division Chief

Chief Information Officer

Staff Services Analyst

All Information Technology Staff, other than

Chief Information Officer, at or above the position of

Associate Information Systems Analyst

Associate Personnel Analyst

Associate Governmental Program Analyst

**Budget Officer** 

Staff Services Analyst

\* Consultants shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The Executive Director may determine in writing that a particular consultant, although a "designated employee" is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The determination of the Executive Director is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

Disclosure Categories

Category 1

A designated employee in this category must report investments, business positions, interests in real property, and sources of income, including gifts, loans, and travel payments.

Category 2

A designated employee in this category must report investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that:

- (A) Are, or were, during the previous two years a "candidate," "public official," "committee," "lobbyist," "lobbying firm," or "lobbyist employer" within the meaning of the Political Reform Act, or file periodic reports pursuant to Government Code Sections 86114 and 86116; or
- (B) Are attorneys that represent persons described in Category 2A in matters directly related to their status as described in Category 2A; or
  - (C) Are committee treasurers; or
- (D) Were the subject of a compliant to, investigation by, or enforcement action of, the Commission, that was acted upon or participated in by the filer during the period covered by the statement.

Category 3

A designated employee in this category must report investments and business positions in business entitles, and income, including gifts, loans, and travel payments, from sources that:

- (A) Are, or were, during the previous two years a "candidate," "public official," "committee," "lobbyist," "lobbying firm," or "lobbyist employer" within the meaning of the Political Reform Act, or file periodic reports pursuant to Government Code Sections 86114 and 86116; or
- (B) Are attorneys that represent persons described in Category 3A in matters directly related to their status as described in Category 3A; or
  - (C) Are committee treasurers.

. Category 4

A designated employee in this category must report investments and business positions in business entities and income, including gifts, loans, and travel payments, from sources that are of the type that within the previous two years has provided services, equipment, leased space, materials, or supplies to the Fair Political Practices Commission.

Category 5

A designated employee in this category must report investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that manufacture, distribute, supply, or install computer hardware or software of the type utilized by the agency, as well as entities providing computer consultant services.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300, 87302, 87303, 87306 and 87311. Government Code.

HISTORY

- 1. New section filed 9–28–76; effective thirtieth day thereafter (Register 76, No. 40)
- 2. Amendment filed 5–2–79; effective thirtieth day thereafter (Register 79, No. 18)
- 3. Repealer and new section filed 4–22–81; effective thirtieth day thereafter (Register 81, No. 17).
- 4. Amendment filed 2–10–82; effective thirtieth day thereafter (Register 82, No. 7)
- 5. Amendment filed 10–10–86; effective thirtieth day thereafter (Register 86, No. 41).
- Amendment filed 9–11–90; operative 10–11–90 (Register 90, No. 43). Submitted to OAL for printing only pursuant to Government Code section 11343.8.
- Amendment of section and Appendix filed 8–28–95; operative 8–28–95 pursuant to Government Code Section 11343.4(d). Approved by Fair Political Practices Commission (Register 95, No. 35).
- 8. Editorial correction deleting previously repealed text (Register 95, No. 39).
- Change without regulatory effect amending second paragraph in subsection (a) and Appendix filed 10-2-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 40).
- 10. Amendment of Appendix and Reference citations filed 2–26–99; operative 3–28–99 (Register 99, No. 9). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 1–21–99 by the Attorney General of the State of California as required by Government Code section 82011.
- 11. Amendment of Appendix filed 5–10–2002; operative 6–9–2002 (Register 2002, No. 19). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 4–2–2002 by the Attorney General of the State of California as required by Government Code section 82011.
- 12. Amendment of section and Appendix filed 1–23–2006; operative 2–22–2006 (Register 2006, No. 4). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 12–8–2005 by the Attorney General of the State of California as required by Government Code section 82011.
- 13. Amendment of section and Appendix filed 12–17–2007; operative 12–17–2007 (Register 2007, No. 51). Submitted to OAL for printing only pursuant to Government Code section 11343.8. This regulatory action was approved on 11–8–2007 by the Attorney General of the State of California as required by Government Code section 82011.

### § 18360. Complaints.

- (a) Pursuant to Section 83115, a person may submit a sworn complaint to the Commission or the Commission may on its own initiative investigate an alleged violation of the Act.
- (b) A sworn complaint shall be filed on a form made available by the Commission and shall comply with all of the following requirements:
  - (1) Be in writing.
- (2) Identify the person or persons who allegedly violated the Act and, if known, the specific provision or provisions of the Act allegedly violated.
- (3) Describe with as much particularity as possible the facts constituting each alleged violation.
- (4) Be based on facts of which the complainant has personal knowledge, or based on information and belief supported by documentary or other evidence included or described in the complaint.
- (5) Include or describe with as much particularity as possible evidence or means of obtaining evidence in support of the complaint.
  - (6) Include names and addresses of potential witnesses, if known.
  - (7) Be signed by the complainant under penalty of perjury.
- (c) This regulation does not prevent a person from complaining by telephone to the Commission or requesting anonymity when doing so, but only a sworn complaint filed substantially in conformity with subdivision (b) entitles the complainant to the procedural rights set forth in Section 83115 and in this regulation.
- (d) Prior to each regularly scheduled Commission meeting, the Commission staff shall provide each member of the Commission a report with the information specified in paragraphs (1) and (2):

- (1) With respect to sworn complaints received since the last report:
- (A) The name of the complainant unless the complainant is a confidential informant.
  - (B) The name of the person or persons complained against.
  - (C) The date the sworn complaint was received.
  - (D) The alleged violation or violations of the Act.
- (2) With respect to a staff-initiated investigation commenced since the last report:
  - (A) The name of the person who is the subject of the investigation.
  - (B) The date the staff initiated the investigation.
  - (C) The alleged violation or violations of the Act.
- (3) The Commission staff shall also provide additional information a Commissioner requests to that Commissioner, including a copy of a sworn complaint, unless the Executive Director determines, in consultation with the Chief of Enforcement, the information will compromise the impartiality of the Commissioner on matters alleged in a complaint.
- (e) The Chief of Enforcement, with the authorization of the Executive Director, shall provide information about sworn complaints and staff-initiated investigations to other governmental agencies that have an official and specific interest in the information, and make every effort to cooperate with other governmental agencies in a position to assist the Commission with an investigation. However, the Commission may decline to disclose the identity of a confidential informant.
- (f) The Executive Director shall take the following actions with respect to complaints:
- (1) Notify the complainant in writing within 14 days of receipt of a sworn complaint that the Commission will do one or more of the following:
- (A) Investigate the allegations of the complaint, in which case the response shall inform the complainant the commencement of an investigation only indicates the complaint alleges a violation of the Act, and the culpability of the person complained against, if any, has not been determined.
  - (B) Refer the complaint to another governmental agency.
- (C) Take no action on the complaint because, on the basis of the information provided, the Commission does not appear to have jurisdiction to investigate, but the complainant may provide additional information.
- (D) Take no action on the complaint because the allegations of the complaint, absent the Commission receiving additional information, do not warrant the Commission's further action for the reason stated.
- (E) Take additional time to evaluate the complaint to determine whether an investigation should ensue and provide an appropriate explanation for the delay. This information shall be provided within successive intervals of no more than 14 days per interval until the Commission notifies the complainant it has acted on the complaint under subparagraphs (A) through (D).
- (2) Provide the subject of the sworn complaint with a copy of the complaint within three business days of receipt and any correspondence sent to the complainant pursuant to subdivision (f)(1) when it is sent to the complainant. However, upon the recommendation of the Chief of Enforcement and provided withholding the information is otherwise consistent with law, the Executive Director may decline to provide a copy of, or may redact information from, the complaint or the correspondence sent to the complainant. If all or part of a complaint or correspondence is withheld from the subject of the complaint, what is withheld may not be disclosed to another person except to a law enforcement agency on a confidential basis. If the sworn complaint is otherwise made public, a copy of the complaint shall be promptly sent to the subject of the complaint.
- (3) Inform the subject of a staff-initiated investigation of the alleged violation or violations not later than the time the information is provided to the Commissioners. However, upon the recommendation of the Chief of Enforcement that providing the information would jeopardize the investigation, the Executive Director may decline to inform the subject of the complaint. If the Executive Director makes this determination, he or she shall prepare a memorandum setting forth justification for the decli-

nation, which shall be retained in the enforcement case file. If the subject of the complaint is not informed of the complaint, the existence of the complaint may not be disclosed except to a law enforcement agency on a confidential basis.

- (g) If the Commission investigates the allegations of a sworn complaint, the Executive Director shall notify the complainant in writing of the following:
- (1) The time, date, and location of any public hearing or public meeting on the complaint scheduled to be heard by an administrative law judge or the Commission.
- (2) The date, time, and location of any public proceeding on the complaint scheduled to be heard by a court.
  - (3) The Commission's or a court's final resolution of the complaint.
- (h) If the person who filed the sworn complaint disagrees with the response sent pursuant to subdivision (f)(1)(C) or (D), he or she may submit in writing, within 20 days of receipt of the response, a request for reconsideration that shall be directed to the Executive Director, who shall forward the correspondence to each member of the Commission for consideration

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83115, Government Code.

#### HISTORY

- 1. New section filed 10-9-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 41).
- 2. Amendment filed 5–22–78; effective thirtieth day thereafter (Register 78, No. 21)
- 3. Amendment of subsection (g) filed 11-2-78; effective thirtieth day thereafter (Register 78, No. 44).
- Amendment of section heading filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 5. Editorial correction of subsection (f) filed 10-29-82 (Register 82, No. 44).
- 6. Amendment of subsection (g) filed 9-24-2007; operative 10-24-2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 39)
- Amendment filed 6-11-2008; operative 6-11-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law.
   Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 24).

### § 18361. Delegation by the Executive Director — Enforcement Proceedings.

If the Executive Director is unavailable, or believes he or she cannot be fair or impartial, the Executive Director may delegate in writing his or her authority under Regulations 18360 and 18361.1 through 18361.8 to the General Counsel or to an attorney from the Legal Division. The Executive Director may also delegate his or her authority under Regulations 18361.1, 18361.4, and 18361.7, in writing, to an administrative law judge.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

### HISTORY

- 1. New section filed 9–24–2007; operative 10–24–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 39). For prior history, see Register 2004, No. 44.
- Amendment filed 6-11-2008; operative 6-11-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 24).

### § 18361.1. Administrative Subpoenas.

The staff, under the direction of the Executive Director, shall seek to assure voluntary compliance with the Political Reform Act and shall investigate possible violations of the Act. The staff shall make reasonable

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efforts to obtain information on a voluntary basis prior to the issuance of an administrative subpoena. The Executive Director, in the exercise of his or her discretion, may forego this procedure with respect to an investigation in progress. The staff shall periodically report to the members of the Commission on the status of all investigations, including the reasons for the issuance of any administrative subpoena without first making reasonable efforts to obtain the information voluntarily. Failure to report to the Commission concerning the issuance of subpoenas shall not affect the validity of any administrative subpoena.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116. Government Code.

#### HISTORY

1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).

### § 18361.2. Memorandum Respecting Civil Litigation.

- (a) If the Executive Director concludes civil litigation should be initiated, he or she shall submit to the Commission a written memorandum, which shall be first reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts and the applicable law of the case and recommending the initiation of a lawsuit. The memorandum shall include all exculpatory and mitigating information known to the staff.
- (b) The Commission shall review the memorandum at an executive session. The General Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in attendance. No other member of the staff may be present unless the Commission meets with a member of the staff for that person to answer questions. The Commission may not resume its deliberations until the person is no longer present. Any communication between the Commission and the person during the executive session shall be recorded. After review of the memorandum, the Commission may direct the Executive Director to do any of the following:
  - (1) Initiate civil litigation.
- (2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal. Code of Regulations Section 18361.4.
  - (3) Return the matter to the staff for further investigation.
- (4) Take no further action on the matter or take any other action it deems appropriate.
- (c) If the Commission decides to initiate civil litigation, the Commission may then permit other members of the staff to attend the executive session.
- (d) If the Executive Director deems it necessary, he or she may call a special meeting of the Commission to review a staff memorandum recommending the initiation of civil litigation.
- (e) It is the intent of the Commission in adopting this section to preserve for the members of the Commission the authority to decide whether alleged violations should be adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the possibility that discussions with members of the staff might cause members of the Commission to prejudge a case that might be heard by the Commission under Government Code Section 83116.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

### HISTORY

- 1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).
- Amendment filed 7-18-2007; operative 8-17-2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 29).

### § 18361.3. Referral of Questions of Law to the Commission.

If the Executive Director or any Commissioner believes that an enforcement decision should not be made until a question of law involving an interpretation of the Political Reform Act is resolved, the Executive Director or any Commissioner may submit the question to the entire Commission. The Commission shall consider the question in general terms at a regular public session. Prior to resolving the question of law,

the Commission or the Executive Director may request the staff or any other interested party to submit a legal analysis of the question of law. Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

### HISTORY

1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).

### § 18361.4. Probable Cause Proceedings.

- (a) Probable Cause Report. If the Chief of the Enforcement Division decides to commence probable cause proceedings pursuant to Government Code Sections 83115.5 and 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter referred to as "the probable cause report." The probable cause report shall contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.
- (b) At least 21 days prior to any determination of probable cause, the Enforcement Division staff shall provide the following, by service of process or registered mail with return receipt requested, to all proposed respondents:
  - (1) A copy of the probable cause report;
- (2) Notification that the proposed respondents have the right to respond in writing to the probable cause report and to request a probable cause conference at which the proposed respondent may be present in person and represented by counsel, and;
- (3) If the Commission met in executive session on this matter pursuant to 2 Cal. Code of Regulations Section 18361.2, a copy of any staff memoranda submitted to the Commission at that time along with the recording of any discussion between the Commission and the staff at the executive session as required in subdivision (b) of 2 Cal. Code of Regulations Section 18361.2.
- (c) Response to Probable Cause Report. Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information.

A proposed respondent who submits a response must file it with the Executive Director and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.

The Commission staff may submit any evidence or argument in rebuttal to the response. When the Commission staff submits evidence or argument in rebuttal to the response, it shall provide a copy, by service of process or registered or certified mail with return receipt requested, to all proposed respondents listed in the probable cause report not later than 10 days following the date the response was filed with the Executive Director.

The Executive Director may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the Executive Director may allow additional material to be submitted as part of the initial response or rebuttal.

(d) Probable Cause Conference. Any proposed respondent may request a probable cause conference. The request shall be served upon the Executive Director and all other proposed respondents not later than 21 days after service of the probable cause report unless the Executive Director extends the time for good cause. The Executive Director shall fix a time for the probable cause conference and conduct the conference informally. The conference shall be closed to the public unless a proposed respondent requests and all other proposed respondents agree to a public conference. If the conference is not public, only members of the Commission staff, any proposed respondent and his or her legal counsel or representative shall have the right to be present and participate. The Executive Director may allow witnesses to attend and participate in part or all of the

probable cause conference. In making this determination, the Executive Director shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate. Representatives of any civil or criminal prosecutor with jurisdiction may attend the conference at the discretion of the Executive Director if they agree to respect the confidential nature of the proceedings. If the conference is not open to the public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone.

The probable cause conference shall be recorded. The Executive Director may determine whether there is probable cause based solely on the probable cause report, any responses or rebuttals filed and any arguments presented at the probable cause conference by the interested parties. If the Executive Director requires additional information before determining whether there is probable cause, he or she may permit any party to submit additional evidence at the probable cause conference.

(e) Finding of Probable Cause. The Executive Director may find there is probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation. A finding of probable cause by the Executive Director does not constitute a finding that a violation has actually occurred.

The Executive Director shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff's failure to provide advice.

If the Executive Director makes a finding of probable cause, he or she shall prepare an Accusation pursuant to Government Code Section 11503 and have it served upon the person or persons who are subjects of the probable cause finding. The Executive Director shall publicly announce the finding of probable cause. The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the Enforcement Division shall be responsible for the presentation of the case in support of the Accusation at an administrative hearing held pursuant to Government Code Section 83116.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

### HISTORY

- 1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).
- Amendment filed 7–18–2007; operative 8–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 29).

### § 18361.5. Administrative Hearings.

(a) Administrative Hearing Brief. Not later than one week prior to a contested administrative hearing that is to be heard by the Commission itself, the Executive Director shall and any respondent may submit to the Commission a written brief describing the evidence to be presented at the hearing and outlining significant legal arguments expected to be raised. Prior to the contested hearing, when a brief is submitted by any party pursuant to this section, a copy shall be provided to all other parties to the administrative action.

(b) Preliminary Matters and Hearing on Merits. If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter

will be scheduled for a hearing before the Commission when an administrative law judge is available.

When the Commission decides to participate in a hearing on the merits, the Chairman of the Commission may decide that any or all motions as to procedural matters, validity or interpretation of the Political Reform Act, disqualification of any member of the Commission, or any other matters not related to the truth or falsity of the factual allegations in the accusation shall be heard by an administrative law judge alone prior to the hearing on the merits. Any such motions or matters shall be noticed in a timely fashion. Any person requesting reconsideration by the Commission of any decision of the administrative law judge shall submit, at least 14 days prior to the hearing on the merits, a written request for reconsideration setting forth the reasons for the request and including any appropriate points and authorities or affidavits.

- (c) Standard of Proof. When an administrative hearing is conducted under Government Code section 83116, findings shall be made on a preponderance of the evidence and it shall require the concurrence of at least three members of the Commission to find a violation or impose any order.
- (d) Factors to be Considered by the Commission. In framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the administrative law judge shall consider all the surrounding circumstances including but not limited to:
  - (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead:
  - (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.
- (e) Stipulated Orders. At any time before or during an administrative hearing and in lieu of such a hearing, the Executive Director and the person who is the subject of the investigation may stipulate to the entry of an order. The order must be approved by the Commission, which may consider the matter in executive session. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under Government Code section 83116. The stipulated order shall be released publicly and shall have the force of an order of the Commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116. Government Code.

### HISTORY

- 1. New section filed 3-15-94; operative 3-15-94 (Register 94, No. 11).
- 2. Renumbering of former section 18361.5 to section 18361.9 and new section 18361.5 filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).

### § 18361.6. Probable Cause Presentation by Civil or Criminal Prosecutor.

The Executive Director may permit any civil or criminal prosecutor, within the meaning of Government Code sections 91001 and 91001.5, to present a case for determination of probable cause under the procedures of regulation 18361.4 and to present such a case to the Commission at an administrative hearing if probable cause is found. When the Executive Director authorizes such a presentation, he or she may require that the prosecutor prepare the probable cause report described in subdivision (a) of regulation 18361.4 and present the case at any probable cause conference or administrative hearing that is held.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

### HISTORY

1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).

### § 18361.7. Executive Director Subpoena Authority.

Notwithstanding 2 Cal. Code Regs. Section 18319:

The Executive Director has the authority to issue a subpoena on behalf of the Commission pursuant to Government Code Sections 83118 and 11510. The Executive Director may authorize the issuance of a subpoena duces tecum if he or she finds, based on information submitted to him or her in writing, that the information requested in the subpoena is material to a specific matter under investigation, and the Executive Director reasonably believes the person or entity has the desired information under its control.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

#### HISTORY

- 1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).
- 2. Amendment filed 9–24–2007; operative 10–24–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007. No. 39).

### § 18361.8. Inapplicability of Regulations 18361.1 Through 18361.8 to Other Enforcement Procedures.

None of the procedures described in regulations 18361.1 through 18361.8 and none of the provisions of Government Code sections 83115.5 and 83116 need be followed in connection with the disposition of any enforcement matter other than by way of an administrative hearing conducted pursuant to Government Code section 83116.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

#### HISTORY

1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).

### § 18361.9. Briefing Procedure of Proposed Decision by an Administrative Law Judge; Reconsideration.

(a) Service of Process.

Within 14 days of receipt of a proposed decision by an administrative law judge following a hearing held pursuant to Government Code section 83116, the Executive Director shall serve a copy of the proposed decision on the Commission's Enforcement Division and the respondent(s). The Executive Director shall include notification of the date, time and place the matter will be heard by the Commission.

- (b) Briefing Procedure.
- (1) No later than 14 days after the date of service of the proposed decision, the Enforcement Division shall file an opening brief. The Enforcement Division shall file the original of the opening brief, with proof of service attached, and six copies with the Executive Director of the Commission. The Enforcement Division shall serve a copy of the brief, with proof of service, on the respondent. The opening brief may address the following:
- (A) Whether the facts stated in the proposed decision are consistent with the evidence presented;
- (B) Whether the proposed decision contains an accurate statement and/or application of the law;
- (C) Whether there is additional material evidence that could not, with reasonable diligence, have been discovered and presented at the administrative hearing;
- (D) Which of the dispositions provided for in Government Code section 11517 is recommended by the Enforcement Division and why; and
- (E) Any other issue the Enforcement Division determines to be relevant.
- (2) No later than 14 days after the date of service of the Enforcement Division's opening brief, the respondent may file a response brief. The respondent shall file the original of the response brief, with proof of service attached, and six copies with the Executive Director of the Commission. The respondent shall serve a copy of the response brief, with proof of service, on the Enforcement Division.

- (3) No later than 14 days after the date of service of the respondent's brief, the Enforcement Division may file a reply brief. The Enforcement Division shall file the original of the reply brief, with proof of service attached, and six copies with the Executive Director of the Commission. The Enforcement Division shall serve a copy of that reply brief, with proof of service, on the respondent.
- (4) The Executive Director may, for good cause, extend the time requirements set forth in this subdivision.
- (5) After receipt of all of the briefs, the Executive Director shall submit a copy of each brief to each Commissioner in a timely manner.
  - (c) Petitions for Reconsideration.
- (1) Any party to the proceeding may petition the Commission for reconsideration within 15 days of service of the decision. The petition shall be served on all parties of record. A petition shall be deemed filed with the Commission on the date indicated on the proof of service; or, if there is no proof of service, the postmark date or date of hand delivery to the Commission's office.
- (2) The petition shall set forth in full detail the issues to be considered by the Commission and contain specific references to the record and applicable principles of law. The petition shall be based upon one or both of the following grounds:
- (A) The petitioner has discovered new material evidence that the petitioner could not, with reasonable diligence, have discovered and produced at the administrative hearing;
  - (B) The decision contains prejudicial errors of law or fact.
- (3) An opposing party may file an answer within 10 days of service of a petition for reconsideration. The answer shall be served on all parties of record.
- (4) A petition for reconsideration is deemed denied unless it is granted or denied in writing no later than 30 days after service of the Commission's decision. The Commission may extend the time for considering a petition for up to 10 days.
- (5) The Chairperson or the Executive Director may grant or deny a petition for reconsideration or extend the time in which to consider the petition.
- (6) If the petition is granted, the case shall be assigned to the full Commission or to an administrative law judge, either of whom may order the taking of additional evidence, or may affirm, rescind, alter or amend the decision on the basis of the record previously submitted. The decision after reconsideration shall be in writing and shall specify the reasons for the decision. If assigned to an administrative law judge, the decision is a proposed decision subject to the procedure set forth in Government Code section 11517.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83108 and 83116, Government Code.

### HISTORY

1. Renumbering and amendment of former section 18361.5 to new section 18361.9 filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).

### § 18361.10. Administratively Adjudicated Enforcement Decisions As Precedent.

- (a) This regulation applies to administratively adjudicated enforcement decisions, not resulting from a default judgment, pursuant to Government Code section 11425.60, and which issue as proposed decisions after the adoption of this regulation. The Commission may designate as a precedent decision part or all of a decision that contains a significant legal or policy determination of general application that is likely to recur. The Commission may also overrule its prior precedent designations. Such a designation or overruling thereof may be made upon the Commission's own motion, or at the request of any person.
- (b) The Commission shall maintain an index of significant legal and policy determinations contained in precedent decisions.
- (1) The index shall be updated at least annually, unless no new precedent decisions were designated or overruled that year.
- (2) The index shall be made available to the public by subscription and on its website.

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- (3) The availability of the index shall be publicized annually in the California Regulatory Notice Register.
- (c) In determining whether all or part of a decision should be designated or overruled as a precedent decision, the Commission may consider whether the decision:
  - (1) Addresses a legal or factual issue of general public interest;
  - (2) Resolves a conflict in the law;
  - (3) Provides an overview of existing law or policy;
  - (4) Clarifies existing law or policy;
  - (5) Establishes a new rule of law or policy; or
- (6) Would be more appropriately addressed by regulatory amendment, the advice process, or the opinion process.
- (d) At the Commission's meeting at which a proposed decision is considered for adoption on the merits, the Commission may make a tentative ruling regarding whether all or part of the proposed decision should be deemed precedent, and whether all or part of a previous related precedent should be overruled. In their briefs on the merits of a proposed decision, the parties to the action may include argument regarding precedent and overruling. Any tentative ruling issued shall be acted upon by the Commission within 120 days after a decision on the merits becomes final. A tentative ruling is not final and shall have no precedential effect until it is separately acted upon. For purposes of this regulation, and with reference to 2 Cal. Code Regs. section 18361.9(c), a decision becomes "final" when the Commission has made a decision on the merits and, either the time to file a petition for reconsideration has been granted or denied and the reconsideration process has concluded.
- (e) After a decision on the merits is final, any person may submit a request, in the form of a concise written brief stating the reasons for the request and pursuant to this regulation, that all or part of such a decision be deemed precedent, not be deemed precedent, or that all or part of a previous related precedent be overruled. Requests regarding precedent shall be delivered to the Executive Director no later than 30 days after a decision on the merits is final. Within 14 days after a request is submitted, the person making the request shall be notified in writing of the Executive Director's decision to grant or deny the request.
- (f) The grant or denial of a request by the Executive Director shall be based upon one or more of the following criteria:
  - (1) The timeliness of the request;
  - (2) Whether the request is clear and unambiguous; and
  - (3) The factors contained in subdivisions (c)(1) through (c)(6).
- (g) If a request is granted, the Executive Director shall deliver copies of the request pursuant to subdivision (h) of this regulation. If the request is denied, the Executive Director shall inform the Commission of the denial, state the reason for the denial and advise the requestor of the requestor's right to appeal the denial to the Commission. Any member of the Commission, or person who has submitted a request that was denied, may ask the Commission to review a denied request at the next meeting of the Commission following the issuance of a denial. If a majority of the Commission approves the granting of a request, the denial shall be rescinded, the requestor shall be notified in writing that the request is granted, and the Executive Director shall deliver copies of the request pursuant to subdivision (h) of this regulation.
- (h) The Executive Director will deliver all granted requests to the Commissioners, the Chief of the Enforcement Division, and parties to the decision, within seven days of the request having been granted.
- (i) Within 60 days of delivery of a granted request by the Executive Director, the Commission shall decide which part or parts, if any, of the final decision will be designated as precedent and what portions, if any, of previous precedent will be overruled.
- (j) Notwithstanding subdivisions (e) through (i) of this regulation, a Commissioner may request that all or part of a final decision be deemed precedent, not be deemed precedent, or that the Commission's designation of all or part of a final decision as precedent be overruled, by formal motion and approval by a majority of the Commission.

(k) The designation or overruling of all or part of a decision as precedent is not rulemaking. The Commission's designation of all or part of a decision, or the lack of such designation, as precedent is not subject to judicial review.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83111 and 83116. Government Code.

### HISTORY

New section filed 2-21-2006; operative 3-23-2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil CO10924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 8).

### § 18362. Access to Complaint Files.

- (a) Access to complaints, responses thereto, and investigative files and information shall be granted in accordance with the requirements of the Public Records Act (Government Code Section 6250, et seq.).
- (b) When release of material is requested pursuant to subdivision (a), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied.
- (c) Any person requesting copies of material pursuant to subdivision (a) shall reimburse the Commission \$0.10 per page for each page copied or supply copying equipment and make copies in the offices of the Commission. Documents may not be removed from the offices of the Commission. If the request is for copies totaling ten pages or less, the copies shall be provided without charge for copying since the administrative costs do not warrant collection of \$1.00 or less. If the request is for copies totaling more than ten pages, reimbursements of copying costs shall include the cost for the first ten pages. Charges imposed pursuant to this subdivision are for the purpose of recovering the cost of copying.
- (d) Requests for access and copies pursuant to subdivision (a) shall be made in writing and shall specifically identify the documents sought. Note: Authority cited: Section 83112, Government Code. Reference: Sections 6250, et seq., 83115, 83115.5 and 83116, Government Code.

### HISTORY

- 1. New section filed 11–13–75; effective thirtieth day thereafter (Register 75, No.
- 2. Amendment of subsections (a) and (c) filed 11-2-78; effective thirtieth day thereafter (Register 78, No. 44).
- 3. Amendment filed 6-21-79; effective thirtieth day thereafter (Register 79, No. 25).
- Amendment of section heading and NOTE filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- Amendment filed 7-14-83; effective thirtieth day thereafter (Register 83, No. 29).
- 6. Repealer and new section filed 2–18–88; operative 3–19–88 (Register 88, No. 9).

### § 18363. Administering Oaths and Affirmations.

The Executive Director, or any member of the Commission staff to whom the Executive Director has delegated authority pursuant to 2 Cal. Code Regs. Sections 18319, shall have the authority to administer oaths and affirmations on behalf of the Commission pursuant to Government Code Section 83118.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83108 and 83118, Government Code.

### HISTORY

- New section filed 11–13–85; effective thirtieth day thereafter (Register 85, No. 46).
- Amendment filed 5–26–98; operative 5–26–98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).

### § 18370. State Agency Ethics Training.

- (a) Core content topics. The topics enumerated in subdivisions (a)(1) to (a)(16) of this regulation are considered by the Commission to be the core content of an ethics orientation course conducted by a state agency pursuant to Government Code section 11146.1. The course should include instruction in each of the following topics:
- (1) Conflicts of Interest under the Political Reform Act (Gov. Code §§ 87100, 87103).

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- (2) Limitations on the Receipt of Gifts (Gov. Code §§ 86203, 89503, 89506).
  - (3) Honoraria Ban (Gov. Code § 89502).
- (4) Contractual Conflicts of Interest: All Contracts (Gov. Code § 1090 et seq.) and Contractual Conflicts of Interest: State Contracts (Pub. Contract Code § 10410).
  - (5) Ban on Free Transportation (Cal. Const. art. XII, § 7).
- (6) Incompatible Activities of State Officers and Employees (Gov. Code § 19990).
  - (7) Doctrine of Incompatible Offices.
- (8) Misuse of Public Funds (Pen. Code § 424; Gov. Code § 8314; Fair Political Practices Commission v. Suitt (1979) 90 Cal. App. 3d 125; Stanson v. Mott (1976) 17 Cal. 3d 206).
- (9) Conflicts of Interest and Campaign Contributions (Gov. Code § 84308).
- (10) Special Restrictions on Personal Loans (Gov. Code § 87460 et seq.).
  - (11) Common Law Doctrine Against Conflicts of Interest.
  - (12) Government Code § 8920 et seq. (the Code of Ethics).
- (13) Conflicts of Interest When Leaving Office (Gov. Code § 87400–87407; Pub. Contract Code § 10411).
  - (14) The state agency's incompatible activities statement.
  - (15) Other government ethics laws specific to the state agency.
- (16) Any other material that the agency or the Commission considers appropriate.
- (b) In cooperation with the Attorney General of California, the Commission shall maintain an ethics training program which provides an orientation to the core content topics identified in subdivision (a) of this regulation.
  - (c) Compliance with Government Code § 11146.4(c).
- (1) A state agency conducting an ethics orientation course as required by Government Code § 11146.1 may request the Commission's consultation on the substantive content of its orientation course with regard to the following core content topics:
- (A) Conflicts of Interest under the Political Reform Act (Gov. Code §§ 87100, 87103).
- (B) Limitations on the Receipt of Gifts (Gov. Code §§ 86203, 89503, 89506).
  - (C) Honoraria Ban (Gov. Code § 89502).
- (D) Conflicts of Interest and Campaign Contributions (Gov. Code § 84308);
- (E) Special Restrictions on Personal Loans (Gov. Code § 87460 et seq.)
- (F) Conflicts of Interest When Leaving Office (Gov. Code §§ 87400–87407; Pub. Contract Code § 10411).
- (2) A state agency conducting an ethics orientation course may request the Commission's consultation on the substantive content by submitting a copy of the proposed course materials to the Executive Director at least thirty (30) working days prior to the date on which the state agency proposes to conduct the ethics orientation course. The Executive Director shall respond in writing to the state agency not more than twenty—one (21) working days after the submission is received.
- (d) A state agency conducting an ethics orientation course may, in lieu of consultation with the Commission pursuant to subdivision (c) of this regulation, incorporate the ethics training program jointly provided by the Commission and the Attorney General (see subdivision (b), above) into its course and require each participant in the course to complete the program. A state agency complying with this subdivision shall be considered to have consulted with the Commission pursuant to Government Code § 11146.4(c).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 11146.1 and 11146.4(c), Government Code.

### HISTORY

1. New section filed 8–16–99; operative 8–16–99 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 99, No. 34).

2. Change without regulatory effect amending subsections (a), (c), (d) and NoTE filed 10–6–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 41).

### § 18371. Local Agency Ethics Training.

- (a) Core Content Topics. The topics enumerated in subdivisions (a)(1) through (a)(4) of this regulation are considered to be the core content of the ethics law component of an ethics orientation course conducted by a local agency pursuant to Government Code section 53235. The course should include instruction on each of the following topics to the extent they are relevant to the official's public duties:
- (1) Laws relating to personal financial gain by public servants, including, but not limited to:
- (A) Laws prohibiting bribery (Penal Code § 68).
- (B) Conflicts of Interest under the Political Reform Act (Gov. Code §§ 87100, 87103).
  - (C) Contractual Conflicts of Interest (Gov. Code § 1090 et seq.).
- (D) Conflicts of Interest and Campaign Contributions (Gov. Code 8 84308)
- (E) Conflicts of Interest When Leaving Office (Gov. Code §§ 87406.1, 87406.3, 87407).
- (2) Laws relating to claiming perquisites of office, including, but not limited to:
- (A) Limitations on the Receipt of Gifts (Gov. Code  $\S\S$  86203, 89503, 89506).
  - (B) Honoraria Ban (Gov. Code § 89502).
- (C) Misuse of Public Funds (Pen. Code § 424; Gov. Code § 8314; Fair Political Practices Commission v. Suitt (1979) 90 Cal.App.3d 125; Stanson v. Mott (1976) 17 Cal.3d 206).
- (D) Prohibitions against gifts of public funds (Cal. Const., art. XVI, § 6).
- (E) Mass mailing restrictions (Gov. Code § 89001).
- (F) Prohibitions against acceptance of free or discounted transportation by transportation companies (Cal. Const., art. XII, § 7).
  - (3) Government transparency laws, including, but not limited to:
- (A) Economic interest disclosure under the Political Reform Act (Gov. Code §§ 87200 et seq.).
  - (B) Brown Act (Gov. Code §§ 54950 et seq.).
  - (C) Public Records Act (Gov. Code §§ 6250 et seq.).
  - (4) Laws relating to fair processes, including, but not limited to:
  - (A) Common law bias prohibitions.
  - (B) Due process requirements.
  - (C) Doctrine of Incompatible Offices.
  - (D) Competitive bidding requirements for public contracts.
- (E) Disqualification from participating in decisions affecting family members (anti-nepotism laws).
- (b) Core Content Ethics Law Topics Under Political Reform Act. Of the core content topics set forth in subdivision (a) above, the topics enumerated below ((b)(1) through subdivision (b)(7)) are considered to be the core content of the "ethics laws" component that pertain to the Political Reform Act, and regarding which, the Commission will provide consultation. The course should include instruction on each of the following topics if relevant to the official's public position:
- (1) Conflicts of Interest under the Political Reform Act (Gov. Code §§ 87100, 87103).
- (2) Conflicts of Interest and Campaign Contributions (Gov. Code § 84308).
- (3) Limitations on the Receipt of Gifts (Gov. Code §§ 86203, 89503, 89506).
  - (4) Honoraria Ban (Gov. Code § 89502).
- (5) Conflicts of Interest When Leaving Office (Gov. Code §§ 87406.1, 87406.3, 87407).
  - (6) Mass Mailing Restrictions (Gov. Code § 89001).
- (7) Economic Interest Disclosure Under the Political Reform Act (Gov. Code § 87200 et seq.).

- (c) A person conducting an ethics orientation course shall be considered to have consulted with the Commission pursuant to Government Code section 53235(c) if the person:
- (1) Has reviewed the materials specified by the Commission for core content topics covered by the Political Reform Act on the Commission's website no more than 60 days in advance of the date the training is conducted or training program is developed, and every year thereafter.
- (2) Develops and presents a training that includes the core content topics covered by the Political Reform Act and sufficiently and accurately reflects the Commission's statutes and regulations. The training may be in separate segments so long as all of the required training is completed by January 1, 2007, and every two years thereafter.
- (d) Nothing in this regulation shall limit the requirement of Government Code sections 53234 et seq., and 53235.2 to include in the mandated ethics training any topics which are not within the Political Reform Act, such as "general ethics principles," "local ethics policies," or those ethics laws under the purview of the Office of the Attorney General.

  NOTE: Authority cited: Section 83112, Government Code, Reference: Sections

### 53234, 53235, 53235.1 and 53235.2, Government Code. HISTORY

- 1. New section filed 2–21–2006; operative 2–21–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil CO10924, California Court of Appeal, Individual District Court of Appeal, unpublished decision, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 8).
- Editorial correction designating first paragraph as subsection (a) (Register 2006, No. 15).

### Chapter 4. Campaign Disclosure

### § 18401. Required Recordkeeping for Chapter 4.

(a) Maintenance of Documents

A candidate, treasurer, and elected officer has a duty to maintain detailed accounts, records, bills, and receipts as necessary to prepare campaign statements and comply with the provisions of Chapter 4 (commencing with Section 84100) of the Act. This duty includes maintenance of detailed information and original source documentation, as follows:

- (1) For a contribution received or other receipt of less than \$25, or an expenditure made of less than \$25:
- (A) The accounts and records shall contain a continuous computation of campaign account balances, and include a listing reflecting the dates and daily totals of the contributions, other receipts, or expenditures on the dates of the contributions, other receipts, or expenditures.
- (B) The original source documentation shall consist of all bank statements, check registers, check stubs, bank or passbooks, and any other records reflecting a continuous computation of campaign account balances in any savings or checking account, money market account, certificate of deposit, credit card account, or any other campaign account, in any bank or other financial institution.
- (2) For a contribution received of \$25 or more, but less than \$100, and for other receipts of \$25 or more:
- (A) The accounts and records shall contain all information required in subdivision (a)(1)(A), and include the date of each contribution or other receipt, the amount, and the full name and street address of the contributor or the source of the other receipt. In the case of a contribution, the accounts and records shall also contain the cumulative amount received from the contributor and specify whether the contribution is monetary or nonmonetary. In the case of a nonmonetary contribution, the fair market value shall also be recorded, along with a description of the goods or services received. If a contribution is received through an intermediary or agent, as defined in Regulation 18432.5, the accounts and records shall also contain the full name and street address, occupation, and employer (or, if self–employed, the name of the principal place of business) of the intermediary or agent and of the true source of the contribution.
- (B) The original source documentation shall consist of all items required in subdivision (a)(1)(B), and copies of contributor checks, cashier's checks, money orders, wire transfers, deposit or duplicate deposit

slips, and any other documents, reflecting all items deposited, and all deposits made, to any campaign account, in any bank or other financial institution. Original source documentation shall also include contributor cards, letters of transmittal, and notices received from contributors. In the case of a nonmonetary contribution, if the contributor has not provided the value of the nonmonetary contribution, the original source documentation shall also include a memorandum or other record describing the method used to determine the value of the goods or services contributed. In the case of contributions made through wire transfer, credit card transaction, debit account transaction, or similar electronic payment option (including those made via the Internet), the original source documentation shall also include all credit card receipts, transaction slips or other writings signed by the contributor, credit card vouchers, and other documentation of credit card transactions, including credit card confirmation numbers and itemized transaction reports, as well as any other information collected when debiting the contributor's account. In the case of contributions made through electronic transactions via the Internet, original source documentation shall also include a record of the transaction created and transmitted by the cardholder including the name of the cardholder, the cardholder's address and the card number.

- (3) For a contribution received of \$100 or more:
- (A) The accounts and records shall contain all information required in subdivisions (a)(1)(A) and (a)(2)(A), and include the occupation and employer (or, if self–employed, the name of the principal place of business) of the contributor. Section 85700 requires the return, not later than 60 days from receipt, of a contribution of \$100 or more for which the candidate or committee does not have on file the name, address, occupation and employer of the contributor. Regulation 18570 sets forth additional recordkeeping requirements concerning occupation and employer information.
- (B) The original source documentation shall consist of all items required in subdivisions (a)(1)(B) and (a)(2)(B), and all communications caused to be sent by the candidate, treasurer, elected officer, or committee to secure this information.
- (4) For an expenditure of \$25 or more, or a series of payments for a single product or service totaling \$25 or more:
- (A) The accounts and records shall contain the date the expenditure was made (or, for an accrued expense, the date the goods or services were received), the amount of the expenditure, the full name and street address of the payee, and a description of the goods or services for which each expenditure was made. If the person or vendor providing the goods or services is different from the payee, the accounts and records shall also contain the same detailed information for that person or vendor. For an expenditure that is a contribution to another candidate or committee, or an independent expenditure, the records shall also contain the cumulative amount of the contributions to, or independent expenditures to support or oppose, each candidate, committee, or ballot measure.
- (B) The original source documentation shall consist of cancelled checks, wire transfers, credit card charge slips, bills, receipts, invoices, statements, vouchers, and any other documents reflecting obligations incurred by the candidate, elected officer, campaign treasurer, or committee, and disbursements made from any checking or savings account, or any other campaign accounts, in any bank or other financial institution. In lieu of cancelled checks, the original source documentation may consist of copies of cancelled checks that contain a legible image of the front and back of the cancelled check, provided the copy was obtained from the financial institution.
- (5) For an itemized expenditure under Section 84211(k) or Section 84303 by a committee controlled by a candidate for a gift, a meal, or travel, the original source documentation in addition to the requirements of subdivisions (a)(4)(A) and (a)(4)(B) shall include a dated memorandum, or other dated written record, containing the information required to be reported under Regulation 18421.7 and the names of all individuals for whom an expenditure for a meal or travel was paid.
- (6) For a loan made or received:

- (A) The accounts and records shall contain the detailed information set forth in subdivisions (a)(1)(A), (a)(2)(A), and (a)(3)(A), and include the interest rate and due date, if any, of the loan, and the full name and street address of any guarantor, or any person liable directly, indirectly, or contingently for the loan.
- (B) The original source documentation shall consist of all promissory notes, extensions of credit, security agreements, loan guarantees, and any other documents reflecting the indebtedness.
- (7) For receipt of an enforceable promise to make a payment, as defined in Regulation 18216:
- (A) The accounts and records shall contain the detailed information required for a contribution set forth in subdivisions (a)(1)(A), (a)(2)(A), and (a)(3)(A).
- (B) The original source documentation shall consist of written contracts and any other documents reflecting the enforceable promise to pay.
- (8) For each mass mailing, as defined in Section 82041.5, sent or delivered pursuant to Regulation 18435:
- (A) The accounts and records shall contain the date of the mailing, the number of pieces mailed, and the method of postage.
- (B) The original source documentation shall consist of an original sample of each mass mailing caused to be sent by the candidate, treasurer, elected officer, or committee.
- (9) For all written notices sent to all contributors of \$5,000 or more, pursuant to Section 84105 and Regulation 18427.1:
- (A) The accounts and records shall contain the date of each notice and the name and address of the person to whom each notice is sent.
- (B) The original source documentation shall consist of a copy of each notice sent.
  - (b) Retention of Documents
- (1) A filer, as defined in Section 82026, has a duty to retain the accounts, records, bills and receipts, and other original source documentation required to be maintained pursuant to subdivision (a).
- (2) A filer shall maintain the accounts, records, bills and receipts, and original source documentation for a period of four years following the date the campaign statement to which they relate is filed. However, in the case of an elected state officer serving a four-year term, the records for campaign statements filed during the first year following his or her election must be kept for five years following the date the campaign statement to which they relate is filed.

COMMENT: In addition to other recordkeeping requirements in the Act or applicable regulations, candidates and committees shall keep the records required in Regulation 18428 regarding contributions from affiliated entities. Additional recordkeeping requirements for candidates for the Legislature and statewide elective office are found in Regulation 18536 concerning the transfer and attribution of contributions, and Regulation 18540 concerning the allocation of expenditures to the primary, general, special or runoff election for purposes of the voluntary expenditure limits

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 84100–84400 and 85700, Government Code.

### HISTORY

- 1. Repealer and new section filed 2–3–78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 5). For prior history see Register 77, No. 14.
- 2. Amendment of subsection (b)(3) filed 5–22–78; effective thirtieth day thereafter (Register 78, No. 21).
- 3. Amendment filed 1–23–79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 4).
- 4. Amendment filed 8–30–79; effective thirtieth day thereafter (Register 79, No. 35)
- Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
- 6. Amendment of section heading filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- 7. Amendment of subsection (a), repealer of subsections (a)(1)–(2), new subsections (a)(1)–(8), and amendment of subsection (b) including new subsection (b)(1) and designation of subsection (b)(2) filed 6–16–92; operative 7–16–92 (Register 92, No. 25).

- 8. Amendment of subsections (a)(2)(A), (a)(3)(A), (a)(6), (a)(7), (a)(8) and (b)(1), new (b)(2) Comment and amendment of Note filed 9–12–2002 as a change without regulatory effect. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 37).
- Amendment of subsections (a)(2)(A)–(B) and (a)(3)(B) filed 9–23–2004; operative 9–23–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).
- 10. Amendment of subsections (a), (a)(2)–(a)(2)(B), (a)(3)(A)–(a)(3)(B), (a)(5)(A) and (a)(6)(A) filed 10–11–2005; operative 11–10–2005 (Register 2005, No. 41).
- Amendment of subsection (a)(2)(B) filed 12–18–2006; operative 1–17–2007.
   Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law. 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).
- Amendment of subsection (a)(4)(B) filed 4–16–2007; operative 5–16–2007.
   Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law. 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 16).
- 13. Amendment filed 6–11–2008; operative 7–1–2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law. 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 24).

### § 18402. Committee Names.

- (a) A committee shall use only one name on its statement of organization.
- (b) The Secretary of State shall not issue an identification number to any committee with the same name as any existing committee that already has an identification number. The name of one committee will be considered the same as that of another committee if the same words are used in the same order, excluding articles.
- (c) Whenever identification of a committee is required by law, the identification shall include the full name of the committee as required in the statement of organization.
- (1) The statement of organization of a sponsored committee shall include the name of the committee as provided in 2 Cal. Code Regs. section 18419
- (2) The name of a committee controlled by one or more candidates for purposes of the election of one or more candidates shall include the last name of each candidate that controls the committee. This subsection only applies to a committee formed on or after July 1, 2007.
- (3) For purposes of Government Code section 84504, the name of a committee primarily formed to support or oppose a ballot measure shall clearly identify the economic or other special interest of the committee's major donors of \$50,000 or more.
- (A) If candidates or their controlled committees, as a group or individually are major contributors of \$50,000 or more, the primarily formed committee name shall include the controlling candidate's name.
- (B) If the major donors of \$50,000 or more share a common employer, the identity of the employer shall also be disclosed in the name of the primarily formed committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84102, 84503, 84504 and 84506, Government Code.

### HISTORY

- 1. New section filed 1–8–86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Amendment of subsection (c), new subsections (c)(1)-(4) and amendment of NOTE filed 1-24-2002 as an emergency; operative 1-24-2002 (Register 2002, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-24-2002 or emergency language will be repealed by operation of law on the following day.
- 3. Certificate of Compliance as to 1–24–2002 order, including redesignation and amendment of former subsections (c)(3)–(4) as subsections (c)(2)(A)–(B), transmitted to OAL 5–15–2002 and filed 6–27–2002 (Register 2002, No. 26).
- 4. Editorial correction of HISTORY 3 (Register 2002, No. 45).

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Register 2008, No. 24; 6-13-2008

Amendment of subsections (b) and (c)(1), new subsection (c)(2), subsection renumbering and amendment of newly designated subsection (c)(3) filed 5-21-2007; operative 6-20-2007 (Register 2007, No. 21).

### § 18402.5. Supplemental Pre-Election Statements.

- (a) A supplemental pre–election statement required by Government Code Section 84202.5 shall contain all the information required by Government Code Section 84211. In addition, a supplemental pre–election statement shall include the jurisdiction and date of, and the total of all contributions made in connection with, the election for which it is filed.
- (b) A supplemental pre–election statement shall cover the period from the day after the closing date of the last semi–annual statement through 17 days before the election for which the statement is filed.
- (c) "Contributions made in connection with an election" means all contributions made to all candidates and their controlled committees, and to all committees primarily formed to support or oppose candidates or measures, being voted on in one jurisdiction on one day, during the period beginning six months prior to the election and ending 17 days before the election

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84202.5, Government Code.

#### HISTORY

1. New section filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10).

### § 18404. Termination of Candidate's and Committees' Filing Requirements.

- (a) Major Donor and Independent Expenditure Committees. The filing obligations of a committee which qualifies pursuant to Government Code Section 82013(b) or (c) terminate at the end of the calendar year in which the committee qualified, except to the extent that additional campaign statements are required by Government Code Sections 84200, 84203, 84203.5, and 84204. If additional campaign statements are filed after the beginning of a new calendar year because the committee files a statement in connection with the qualification of a measure or a semi-annual statement covering activity for the period July 1 through December 31, the committee's filing obligations terminate when such statements have been filed.
- (b) Recipient Committees. A treasurer of a committee which qualifies pursuant to Government Code Section 82013(a) may terminate the committee's status as a committee, only by completing the termination section on the Form 410 (Statement of Organization) declaring, under penalty of perjury, that the committee:
- (1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future:
- (2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;
  - (3) Has no surplus funds; and
- (4) Has filed all required campaign statements disclosing all reportable transactions.
  - (c) Filing of Committee Terminations.

As specified in Government Code Section 84101(a), the committee shall file the original of the statement of organization declaring the committee's termination with the Secretary of State, and shall also file a copy of the statement of organization with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.

- (d) Candidates and Officeholders. Pursuant to Government Code Section 82007, a candidate (which term includes an officeholder) is obligated to file campaign statements under the Act until his or her status as a candidate is terminated. An officeholder must file campaign statements required under the Act during the entire time the individual holds office. The filing obligations of a candidate or officeholder terminate as follows:
- (1) Candidates or Officeholders with Committees. The filing obligations of a candidate or officeholder who has one or more controlled committees terminate when the individual has terminated all his or her controlled committee(s) and has left office.

- (2) Candidates or Officeholders without Committees. The filing obligations of a candidate or officeholder who does not have a controlled committee, and who received contributions and made expenditures of less than \$1,000 in the calendar year and filed a Form 470, terminate at the end of the calendar year for which the Form 470 was filed if:
- (A) the candidate lost, withdrew, or was not on the ballot in the election; or
  - (B) the individual left office during the calendar year; and
- (C) the individual has ceased to receive contributions and make expenditures and has filed all required campaign statements.
- (e) A candidate or a committee whose filing obligations have terminated remains subject to all civil and criminal penalties and remedies for any violations of this title or any other provision of law.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82007, 84101 and 84214, Government Code.

#### HISTORY

- 1. New section filed 3–31–77; effective thirtieth day thereafter (Register 77, No. 14)
- 2. Amendment of subsection (a) filed 5-22-78; effective thirtieth day thereafter (Register 78, No. 21).
- 3. Amendment filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- 4. Amendment of subsection (a) filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
- 5. Amendment of section and NOTE filed 9–30–99; operative 9–30–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 40).

### § 18404.1. Termination and Reopening of Committees.

- (a) Pre–2001 Committees. Any candidate controlled committee organized for elective state office for an election held prior to January 1, 2001, must be terminated as set forth in 2 Cal. Code Regs. section 18404 no later than December 31, 2002, except candidates who, as of February 15, 2002, hold elective state office pursuant to an election held prior to January 1, 2001, may retain one pre–2001 controlled committee, subject to the following:
- (1) Candidate controlled committees that have no debts must be terminated no later than 9 months after the earliest of the date the candidate leaves office or his or her current term of office ends.
- (2) Candidate controlled committees that have debts must be terminated no later than 24 months after the earliest of the date the candidate leaves office or his or her current term of office ends.
- (b) 2001 and Post–2001 Committees. Candidate controlled committees organized for elective state office for an election held on or after January 1, 2001, must be terminated as set forth in 2 Cal. Code Regs. section 18404 and as follows:
- (1) Candidate controlled committees with no "net debts outstanding," as defined in 2 Cal. Code Regs. sections 18531.6(d) and 18531.61(d), must be terminated no later than 9 months after the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends or, for withdrawn candidates, no later than 9 months after the election from which the candidate withdrew.
- (2) Candidate controlled committees with "net debts outstanding," as defined by 2 Cal. Code Regs. sections 18531.6(d) and 18531.61(d), must be terminated no later than 24 months after the earliest of the date the candidate is defeated, leaves office or the term of office for which the committee was formed ends or, for withdrawn candidates, no later than 24 months after the election from which the candidate withdrew.
- (3) Candidates defeated in elections that were held after January 1, 2001, but prior to the effective date of this regulation, February 15, 2002, shall terminate their committees 9 months from the effective date of this regulation if the committee has no net debts outstanding, as defined in 2 Cal. Code Regs. section 18531.6, and 24 months from the effective date of this regulation if the committee has outstanding debts.
- (c) Campaign Bank Accounts. On or before termination of the candidate controlled committee, the campaign bank account associated with that committee must be closed. No further activity, including receipt of contributions or making of payments, is allowed after the date of the termination of the committee unless the committee and a campaign bank account are reopened pursuant to this regulation. Contributions received

while a committee is closed after the termination of the committee must be returned to the contributors. Contributions received by a committee reopened in accordance with this regulation are subject to the limits applicable to the election for which the committee was originally formed as well as 2 Cal. Code Regs. sections 18531.6, 18531.61 and 18536.

- (d) Local Committees. Candidates who are elected to an elective state office must terminate any controlled committees formed for local elections held concurrent with or prior to their election to state office. Such termination shall be pursuant to 2 Cal. Code Regs. section 18404 and shall be no later than December 31, 2002 for committees formed by candidates who currently hold elective state office pursuant to an election held prior to January 1, 2001, and within 24 months of the candidate's election to state office if he or she is elected on or after January 1, 2001.
- (e) Creditors' Notice. The committee shall give at least 60 days notice of its impending termination to all creditors. Such notice shall include the date upon which the committee expects to file its terminating statement of organization.
- (f) Requests for Extensions. A committee may submit a request to the Executive Director of the Fair Political Practices Commission for an extension of up to six months' duration in which to comply with the requirements of this section. Such a request shall be submitted to the Executive Director no later than 45 days prior to the original due date for the committee's termination, and shall include evidence supporting any of the factors set forth in subdivisions (f)(1) through (f)(3) of this regulation upon which the committee is basing its request for extension. Requests to renew the extension for additional periods of up to six months must be submitted to the Executive Director no later than 45 days prior to the expiration of the prior extension. If the request for extension is received by the Executive Director fewer than 45 days prior to the original due date or the expiration of any prior extension, the request for extension is automatically denied. The Executive Director may, for good cause shown, waive this requirement.

Within 15 days after a request for extension that is timely filed is received by the Executive Director, the committee making the request shall be notified in writing of the decision of the Executive Director. If the request for extension is denied, the notification shall state the reason for the denial and shall advise the committee whether the committee may request an appeal to the Chairman pursuant to 2 Cal. Code Regs. section 18404.1(g). However, an automatic denial or a late–filed request that is waived by the Executive Director is not subject to the appeal procedure of 2 Cal. Code Regs. section 18404.1(g), unless such appeal is authorized in writing by the Executive Director. The Executive Director's authorization of such appeal, if given, shall specify a date no less than 10 days before the termination deadline by which such an appeal must be filed. For late–filed requests, the written notification shall issue prior to that time period.

In denying or granting the request for extension, the Executive Director shall consider the following:

- (1) Whether the committee:
- (A) Is continuing to receive contributions toward its outstanding debts;
- (B) Has, in the previous 6 months, raised significant funds toward its outstanding debts;
- (C) Demonstrates the ability to discharge its debts, loans and other obligations; and
  - (D) Has filed all required campaign statements; or
- (2) Whether the candidate or committee is a party to litigation arising out of his or her candidacy or status as an elected official, or anticipates the filing of such litigation; or
  - (3) Other good cause shown.
- (g) Appeals of Denials of Requests for Extensions. When the Executive Director notifies a committee that files a timely request for extension that its request has been denied, the Executive Director shall establish and state a deadline by which the committee may submit any appeal of the denial of its request for extension to the Chairman. The deadline shall

be no less than 10 days after transmittal of the notification of the denial of the request for extension. Any such appeal shall:

- (1) Be submitted to the Commission offices either in person, by fax, or by overnight delivery service;
- (2) Include all evidence submitted with the original request for extension supporting any of the factors set forth in subdivisions (f)(1) through (f)(3) of this regulation upon which the committee is basing its request for extension; and
- (3) Directly address the reasons for the denial of the request stated in the Executive Director's notification to the committee.

The Chairman's decision shall be final, and may not be appealed to the Commission.

- (h) Local Candidate Controlled Committees. This regulation does not apply to local candidate controlled committees, except as provided in subdivision (d) of this regulation.
- (i) Reopening of Terminated Committees. A committee subject to the requirements of this regulation may submit a request to the Executive Director to reopen for any of the following reasons:
- (1) To receive a refund or similar payment received after termination of the committee:
- (2) To pay a fine as permitted under Government Code section 89513(c);
- (3) To pay expenses incurred in connection with an audit or investigation of the committee under this title;
- (4) To pay litigation expenses as permitted under Government Code sections 89513 and 89514, other than expenses subject to Government Code sections 85304 and 2 Cal. Code Regs. section 18530.4; or
- (5) For any other good cause shown that would further the disclosure requirements or contribution limits of this title.
- (j) Expenditure of a refund or similar payment under this regulation must be made consistent with Government Code sections 89510–89519, as applicable, including payment of debts that the committee declared it had no intention or ability to discharge under 2 Cal. Code Regs. section 18404. In addition, the reopening of a committee to receive payments and make expenditures must be in compliance with Government Code sections 85316 and 85321 and 2 Cal. Code Regs. sections 18531.6 and 18531.61. A determination by the Executive Director under this regulation does not constitute a determination regarding the applicability of the statutes and regulations referenced in this subdivision.
- (k) Procedures for Reopening Terminated Committees. In order for the committee's reopening to be effective, the committee must:
- (1) Request and receive approval to reopen the committee from the Executive Director of the Fair Political Practices Commission as specified in this subdivision. The purpose(s) for requesting the reopening of the committee must be included in the request. Within 15 days after a request is received by the Executive Director, the requestor shall be notified in writing of the decision of the Executive Director. In denying or granting the request, the Executive Director shall consider whether the proposed purpose(s) for reopening the committee are as specified in subdivision (i) of this regulation, and specify the purpose(s) for reopening the committee in the notification if the request is granted. If the request is denied, the notification shall state the reason for the denial and advise the requestor of the right to appeal the decision to the Chairman within 10 days after the date of the transmittal of the denial notification. Any such appeal shall:
- (A) Be submitted to the Commission Offices either in person, by fax, or by overnight delivery service;
- (B) Include all material, if any, submitted with the original request to reopen supporting any of the permissible reasons for reopening as set forth in subdivision (i) of this regulation upon which the committee is basing its request; and
- (C) Directly address the reasons for the denial of the request stated in the Executive Director's notification to the committee.

The Chairman's decision shall be final, and may not be appealed to the Commission.

- (2) File an amendment to Form 410 (Statement of Organization) declaring the committee's reopening with the Secretary of State along with written authorization from the Executive Director granting the reopening of the committee:
- (3) Mark "Amendment" on the Form 410 and list the committee's original identification number and name;
- (4) Include the word "Reopened" in parentheses after the committee name on the Form 410; and
- (5) File a copy of the amended statement of organization with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Government Code section 84215.
- (*l*) Filing Requirements. A reopened committee is subject to all of the committee filing requirements of this title including those specified in subdivision (k) of this regulation.
- (m) Termination of Reopened Committees. Unless the Executive Director specifies a date of termination in his or her notification, a reopened committee must terminate pursuant to the requirements of 2 Cal. Code Regs. sections 18404(b) and (c) within 30 days of the date the specified purpose(s) for which the committee was reopened ceases to exist. The Executive Director may specify in his or her notification the projected date of completion and the date of termination for the reopened committee. If the reopened committee required additional time before terminating for a purpose or purposes other than specified in its initial request for reopening under subdivision (k), or the Executive Director specifies a date of termination in his or her notification and the reopened committee requires additional time to complete the original reopening purpose, then the committee must reapply for and receive approval of the Executive Director under the same procedures and timelines set forth in subdivision (k)(1), prior to the termination date for the reopened committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84102, 84103, 84214 and 84215, Government Code.

### HISTORY

- 1. New section filed 2–14–2002; operative 2–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 7).
- 2. Amendment of subsections (a)—(a)(2) filed 9–12–2002 as a change without regulatory effect. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 37).
- 3. Amendment of subsections (f), (f)(1)(B) and (f)(1)(D), new subsections (g)–(g)(3) and subsection relettering filed 7–29–2003; operative 7–29–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 31).
- 4. Amendment of section heading and subsections (b)(1)–(f), (f)(1)(B), (g) and (h), new subsections (i)–(m) and amendment of NOTE filed 7–27–2004; operative 7–27–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 31).

### § 18404.2. Termination of Pre–2001 Committees of Non–Officeholding Candidates. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84214, Government Code.

### HISTORY

- 1. New section filed 10–18–2001 as an emergency; operative 10–18–2001 (Register 2001, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–15–2002 or emergency language will be repealed by operation of law on the following day.
- Repealer filed 2–14–2002; operative 2–15–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 7).

# § 18406. Short Form for Candidates or Officeholders Who Receive and Spend Less than \$1,000 in a Calendar Year.

(a) A candidate or officeholder who plans to receive contributions of less than \$1,000 and who plans to make expenditures of less than \$1,000 in a calendar year may file a short form campaign statement for that calendar year. The period covered by the short form is the calendar year. No other campaign statements must be filed by a candidate or officeholder

who has filed the short form campaign statement for activity in the calendar year unless the candidate or officeholder receives \$1,000 or more in contributions or makes \$1,000 or more in expenditures.

- (b) A candidate who files a short form campaign statement in connection with an elective office, covering the calendar year in which the candidate's name will appear on the ballot, with a declaration of candidacy, as a pre–election statement pursuant to Government Code section 84200.5, or as a semi–annual campaign statement pursuant to Government Code section 84200 for the period ending June 30, and subsequently receives monetary or non–monetary contributions totaling \$1,000 or more or makes expenditures totaling \$1,000 or more prior to the election shall send written notification to the Secretary of State, the local filing officer with whom the candidate is required to file the originals of his or her campaign statements, and each candidate contending for the same office, as follows:
- (1) The notification shall be sent within 48 hours of receiving contributions totaling \$1,000 or more or making expenditures of \$1,000 or more;
- (2) The notification shall include the name and address of the candidate, the elective office for which the short form campaign statement was filed, the date of the election, and the date contributions totaling \$1,000 or more were received or expenditures totaling \$1,000 or more were made;
- (3) The notification shall be sent by guaranteed overnight delivery, personal delivery, or facsimile transmission.

NOTE: Authority cited: Sections 83112 and 84206, Government Code. Reference: Section 84206, Government Code.

### HISTORY

- 1. New section filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10).
- 2. Amendment filed 6-15-88; operative 7-15-88 (Register 88, No. 25)
- 3. Designation of subsection (a) and new subsections (b)–(c) filed 5–23–94; operative 5–23–94 (Register 94, No. 21).
- 4. Editorial correction of subsection (c) (Register 96, No. 43).
- Amendment of subsection (b) and repealer of subsection (c) filed 5-26-98; operative 5-26-98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- Change without regulatory effect amending subsection (b)(3) filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).
- 7. Amendment of subsection (b) filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).

### § 18410. Special Filing Provisions. [Repealed]

NOTE: Authority cited: Sections 83111, 83112 and 84201, Government Code. Reference: Sections 84200, 84208 and 84210, Government Code.

### HISTORY

- New section filed 8-10-83 as an emergency; effective upon filing (Register 83, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-8-83.
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 43).

### § 18413. Reporting Independent Expenditures by Eligible 501(c)(3)/501(c)(4) Organizations.

- (a) Application. This regulation provides an event–based reporting alternative for an eligible 501(c)(3) or 501(c)(4) organization that makes occasional independent expenditures from its general treasury to support or oppose a ballot measure in California. This reporting option does not apply for contributions or independent expenditures made by a 501(c)(3) or 501(c)(4) organization to support or oppose a candidate in a California election, or to contributions made to support or oppose a ballot measure in California.
- (b) Definitions. For purposes of this regulation, "Eligible 501(c)(3) or 501(c)(4) organization" means an organization to which all of the following apply:
- (1) The organization has received either a 501(c)(3) or 501(c)(4) tax–exempt status from the Internal Revenue Service and is operating under either Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code; and if incorporated in the State of California, has received a tax–exempt determination from the California Franchise Tax Board under California

Revenue and Taxation Code Section 23701d or 23701f, or if incorporated in a state other than California, has received the required tax–exempt determination under the laws of the state of incorporation.

- (2) The organization is multipurpose and occasionally makes independent expenditures, using funds donated directly to its general treasury by individuals or business entities, to support or oppose ballot measures in California. "Occasionally makes independent expenditures" means either of the following:
- (A) Expenditures from the organization's general treasury totaling, in the aggregate in a calendar year, less than \$500,000 to support or oppose four or fewer state ballot measures.
- (B) Expenditures from the organization's general treasury totaling, in the aggregate in a calendar year, less than \$50,000 to support or oppose one or more local ballot measures.
- (c) Reporting Options. Under Regulation 18215(b)(1), an eligible 501(c)(3) or 501(c)(4) organization that makes an independent expenditure from its general treasury is required to identify the donors of funds utilized to make independent expenditures on ballot measures in California, if the organization has previously made independent expenditures or contributions from its general treasury totaling at least one thousand dollars (\$1,000) during the same calendar year, or during any of the four calendar years immediately preceding that year. An eligible 501(c)(3) or 501(c)(4) organization shall either (1) report the independent expenditure as a recipient committee or (2) elect to report the independent expenditure under the event—based reporting rules set forth in subdivision (d) without designating a treasurer, filing a statement of organization, periodic recipient committee reports on Form 460, or a statement of termination.
  - (d) Event-Based Independent Expenditure Reporting.
- (1) When to File. An eligible 501(c)(3) or 501(c)(4) organization that elects event–based reporting shall report an independent expenditure of \$1,000 or more made from its general treasury to support or oppose the qualification or passage of a ballot measure on an Independent Expenditure Report (Form 496) filed within 10 business days after making the independent expenditure. However, if the eligible 501(c)(3) or 501(c)(4) organization makes the independent expenditure during the 90 days preceding a state election or 16 days preceding a local election in which the measure appears on the ballot, it shall file the Independent Expenditure Report within 24 hours after making the independent expenditure.
  - (2) Report Contents.
- (A) The Form 496 report shall list the eligible 501(c)(3) or 501(c)(4) organization's full name and street address, and in addition, shall include the designation "Eligible 501(c)(3) IE Report" or "Eligible 501(c)(4) IE Report" in the "Name of Filer" field, indicating the organization's election to use event–based independent expenditure reporting. The report shall include the name of a current officer, director, or trustee of the 501(c)(3) or 501(c)(4) organization listed on the organization's Internal Revenue Service Form 990, who shall be responsible for the accuracy and completeness of the report.
- (B) The Form 496 report shall contain the information about the independent expenditure required by the form concerning the date, amount, and description of the goods or services for which the expenditure was made, and shall identify the measure the independent expenditure is supporting or opposing as specified in Section 84204.5(a)(2).
- (C) The Form 496 report shall identify the donors whose payments of \$100 or more to the general treasury were used to pay for the independent expenditure. If only a part of a donor's payment to the organization was used to make independent expenditures, the payment may be apportioned for reporting purposes. The organization may use any reasonable method that accurately reflects the sources of funds for the expenditure, such as apportioning the donor's payments, or using the last in, first out, accounting method. Once the organization selects an accounting method, it must continue to use the same method. Donor payments to the organization that may be subject to itemized disclosure are those made after the date of the organization's first expenditure or contribution of \$1,000

or more pursuant to Regulation 18215(b)(1). However, if the donor knows that his or her payment to the organization will be used for ballot measure independent expenditures the payment shall be disclosed as contributed by that donor.

- (D) The organization shall maintain the records necessary to document the donor contributions and the independent expenditures reported.
- (3) Where to File. For an independent expenditure in connection with a state measure, the organization shall file a Form 496 report electronically with the California Secretary of State. For an independent expenditure in connection with a local measure, the organization shall file a Form 496 report electronically with the California Secretary of State, and shall also file a copy of the report with the clerk of the city or county in which the measure is being voted on.
- (e) A 501(c)(3) or 501(c)(4) organization that is not an eligible 501(c)(3) or 501(c)(4) organization but otherwise qualifies as a recipient committee under Title 9 (commencing with Section 81000) of the Government Code shall report as a recipient committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82013, 84204 and 85500, Government Code.

#### HISTORY

- 1. New section filed 12–19–2007as an emergency; operative 12–19–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law. 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–18–2008.
- Certificate of Compliance as to 12–19–2007 order, including amendment of section heading and section, transmitted to OAL 4–11–2008 and filed 5–14–2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 20).

### § 18416. Annual Loan Reports. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84216 and 84216.5, Government Code.

### HISTORY

- 1. New section filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
- 2. Amendment filed 6-10-87; operative 7-10-87 (Register 87, No. 25).
- Repealer filed 7–12–2001; operative 8–11–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 28).

### § 18419. Sponsored Committees.

- (a) The terms used in this section are defined as follows:
- (1) "Sponsored committee" means a committee, other than a controlled committee, which has one or more sponsors.
- (2) "Sponsor" of a committee means any person (except a candidate, proponent or other individual) to whom any of the following applies:
- (A) The committee receives 80 percent or more of its contributions either from the person or from the person's members, officers, employees or shareholders;
- (B) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers or employees;
- (C) The person provides, alone or in combination with other organizations, all or nearly all of the administrative services for the committee; or
- (D) The person sets, alone or in combination with other organizations, the policies for soliciting contributions or making expenditures of committee funds.
- (3) "Intermediate unit" means a chapter, local, branch, unit or similar component of a sponsor that collects money from its members, officers, employees or shareholders when, at the time of the making of the payment, the donor knows or has reason to know that the payment, or funds with which the payment will be commingled, will be used to make contri-

butions by the sponsored committee within the meaning 2 Cal. Code of Regs. section 18215(b)(1).

- (4) "Member" includes a member, employee, officer, shareholder or any other person affiliated with a sponsor or an intermediate unit.
- (5) "Member contribution" is a voluntary or mandatory payment made by a member of a sponsor or an intermediate unit when, at the time of making the payment, the donor knows or has reason to know that the payment, or funds with which the payment will be commingled, will be used to make contributions by a sponsored committee within the meaning of 2 Cal. Code of Regs. section 18215(b)(1).
  - (b) In the case of a sponsored committee:
- (1) The committee shall include the name of its sponsor in the name of the committee. If the sponsored committee has more than one sponsor and the sponsors are members of an industry or other identifiable group, the name of the committee shall include a term identifying that industry or group.
- (2) The committee shall indicate on the committee's statement of organization the industry group or affiliation of the sponsor.
- (3) The sponsor shall file as a committee if it meets the thresholds set forth in Government Code section 82013 except as provided in subdivisions (c) through (f).
- (c) A sponsor is not a committee within the meaning of Government Code section 82013 if all of the following criteria are satisfied:
- (1) The sponsor does not directly or indirectly make or receive a sufficient amount of contributions or independent expenditures, other than those in support of its sponsored committee, to satisfy the thresholds set forth in Government Code section 82013. A sponsoring organization makes contributions and expenditures in support of its sponsored committee when it provides the committee with member contributions or money from its treasury, with the exception of establishment or administrative costs (see 2 Cal. Code Regs. section 18215(c)(16));
- (2) The sponsored committee reports all contributions and expenditures made in support of the committee by the sponsor, its intermediate units, and the members of such entities. With respect to a member contribution which is channeled through the sponsor or an intermediate unit, the member is the contributor;
- (3) The sponsored committee reports as an intermediary the sponsor and, if required by paragraph (f) of this regulation, any intermediate unit, as an intermediary, if the sponsor or intermediate unit directly or indirectly provides the committee with \$100 or more in member contributions regardless of whether any member for whom the sponsor or intermediate unit acts contributed \$100 or more; and
- (4) A responsible officer of the sponsor, as well as the treasurer of the sponsored committee, verifies the committee's campaign statement pursuant to Government Code section 81004.
- (d) A sponsor which is a committee pursuant to Government Code section 82013 by virtue of making or receiving contributions or independent expenditures other than those in support of its sponsored committee:
- (1) Need not report on its campaign statement member contributions to the sponsored committee if the committee discloses such contributions in compliance with the standards set forth in paragraphs (c)(2), (c)(3), and (c)(4) of this regulation;
- (2) Must report contributions or payments for establishment or administrative costs it makes to the sponsored committee in the form of money from its treasury; and
- (3) Must make a prominent reference on its campaign statement stating the name of its sponsored committee, including the committee's identification number issued by the Secretary of State's office.
- (e) An intermediate unit is not a committee pursuant to Government Code section 82013 by virtue of making contributions and expenditures in support of its sponsor's sponsored committee or by virtue of acting as an intermediary pursuant to paragraph (c)(3) of this regulation. An intermediate unit which is a committee by virtue of making or receiving other contributions or independent expenditures need not disclose member contributions if the sponsored committee follows the procedures set forth

in paragraph (c)(3) of this regulation for reporting the member contributions.

(f) An intermediate unit is reportable as an intermediary on the sponsored committee's campaign statement pursuant to paragraph (c)(3) of this regulation only if the name of the intermediate unit is substantially different from the name of the sponsor.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82048.7 and 84102, Government Code.

#### HISTORY

- 1. New section filed 12–1–77; effective thirtieth day thereafter (Register 77, No. 49).
- 2. Amendment of subsection (b)(4) filed 1–25–80; effective thirtieth day thereafter (Register 80, No. 4).
- 3. Amendment filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8)
- 4. Amendment filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10)
- Amendment of subsections (a)(3), (a)(5), (c)(1), (d)(3) and Note filed 6–19–96; operative 6–19–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 25).
- Amendment of subsection (a)(2)(A) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 7. Amendment of subsections (c)(1) and (d)(2) filed 5–28–97; operative 5–28–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
- 8. Change without regulatory effect amending subsections (a)(2), (a)(3), (a)(5), (b)(3)–(c)(1), (c)(4)–(d) and (e) filed 10–6–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 41).

### § 18420. Reporting of Campaign Contributions and Expenditures of State or Local Government Agencies.

- (a) Any candidate or committee that receives contributions from a state or local government agency shall report receipt of those contributions.
- (b) The payment by a state or local government agency of the salary or expenses of its employees or agents is an expenditure or contribution only if the salary or expenses are for campaign activities and meet the requirements of 2 Cal. Code Regs. section 18423. For purposes of this subdivision, "campaign activities" shall include, but are not limited to, the following:
  - (1) Arranging or coordinating a campaign-related event;
  - (2) Acting in the capacity of the campaign manager or coordinator;
- (3) Soliciting, receiving or acknowledging campaign contributions or arranging for the raising of contributions;
- (4) Developing, writing or distributing campaign literature or making arrangements for campaign literature;
- (5) Arranging for the development, production or distribution of campaign literature;
- (6) Preparing television, radio or newspaper campaign advertisements;
- (7) Arranging for the development, production, publishing or broadcast of campaign advertisements;
- (8) Establishing liaison with or coordinating activities of campaign volunteers;
  - (9) Preparing campaign budgets;
  - (10) Preparing campaign statements; and
  - (11) Participating in partisan get out the vote drives.

Nothing in this subdivision shall require the reporting of employee's campaign activities if such activities are performed on vacation time or other than during publicly paid working hours.

- (c) Notwithstanding subdivision (b), the payment of salary or expenses by a state or local government agency to an elected official shall not be an expenditure or contribution.
- (d) If a state or local government agency makes expenditures or contributions, as those terms are defined in Government Code sections 82015 and 82025 and 2 Cal. Code Regs. sections 18215 and 18225, the state or local government agency shall file campaign statements required by Chapter 4 of the Political Reform Act if the agency qualifies as a committee under Government Code section 82013.

(e) The individual authorizing or directing the making of expenditures or contributions which qualify an agency as a committee shall be the treasurer unless another individual is designated.

COMMENT: This regulation establishes the requirement for a committee to report receipt of contributions from state or local government agencies. If a state or local government agency has enough campaign activity to qualify as a committee, the state or local government agency itself will be required to file campaign statements.

Nothing in this regulation should be read as condoning or authorizing campaign—related activities by a state or local government agency. Under many circumstances, such activities may be illegal. See Penal Code section 424; Government Code section 54964; *Stanson v. Mott.*, 17 Cal. 3d 206 (1976); *People v. Sperl.*, 54 Cal. App. 3d 640 (1976); and *People v. Battin.*, 77 Cal. App. 3d 635 (1978). NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84200, *et seq.*, Government Code.

#### HISTORY

- 1. New section filed 8–30–79; effective thirtieth day thereafter (Register 79, No. 35)
- 2. Amendment of section heading filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- 3. Editorial correction of Reference cite (Register 95, No. 17).
- 4. Editorial correction of COMMENT (Register 95, No. 44).
- Change without regulatory effect amending subsections (b) and (b)(11)–(e) filed 10–6–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 41).

### § 18420.5. Campaign Filing Requirements for the February 5, 2008 Statewide Election.

The reports and statements described in this regulation are required to be filed for the statewide election to be held on February 5, 2008, as specified in Elections Code Section 1202. Except as provided below, a committee is subject to all other applicable reporting requirements set out in Chapters 4 and 5 of Title9 of the Government Code for purposes of the election.

(a) Combined Semiannual and Preelection Statements. A candidate for elective state office being voted on in the election or a committee under Government Code Section 82013(a) primarily formed to support or oppose a candidate for elective state office or a ballot measure being voted on in the election shall file the combined semiannual and preelection campaign statements specified below pursuant to Government Code Sections 84200, 84200.5, 84200.8, and 84205:

### FILING SCHEDULE

Statement	Period Covered	Filing Deadline
First Preelection/ Semiannual Second Preelection	Last statement filed — 12-31-07 1-1-08 — 1-19-08	1-5-08 1-24-08

- (b) Supplemental Preelection Reports. Notwithstanding Government Code Section 84202.5(b), a candidate not being voted on in the election and a committee under Government Code Section 82013(a) that makes contributions totaling ten thousand dollars (\$10,000) or more to candidates for elective state office being voted on in the election or committee primarily formed to support or oppose candidates for elective state office or ballot measures being voted on in the election shall file a supplemental preelection campaign statement as specified in Government Code Section 84202.5 and 2 Cal. Code Regs. Section 18402.5 no later than January 24, 2008, for the period ending January 19, 2008. This supplemental preelection statement is not required if the candidate or committee has reported all contributions described in this subdivision on a quarterly, semiannual, or preelection campaign statement filed on or before January 19, 2008.
- (c) Political Party Committees. A political party committee as defined in Government Code Section 85205 shall file the preelection statements specified in subdivision (a) if the committee receives contributions totaling one thousand dollars (\$1,000) or more, makes contributions totaling five hundred dollars (\$500) or more, or makes independent expenditures totaling five hundred dollars (\$500) or more, during the period covered by the preelection statement.

(d) Slate Mailers. A slate mailer organization that produces a slate mailer supporting or opposing candidates for elective state office or measures being voted on in the election shall file the statements specified in subdivision (a) if the organization meets the thresholds described in Government Code Section 84218(a) and (b)(2) during the period covered by the statement.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82046 and 84200–84205, Government Code.

### HISTORY

1. New section filed 9–24–2007; operative 10–24–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 39). For prior history, see Register 98, No. 22.

### § 18421. Cash Equivalents.

In reporting the balance of cash and cash equivalents on a campaign statement pursuant to Government Code Section 84211(e), a candidate or committee shall report separately:

- (a) The balance of cash. This means the combined balance in all campaign checking accounts and savings accounts, money market funds and certificates of deposit.
- (b) The balance of cash equivalents. This means the combined original cost of all investments and interests in real property purchased with campaign funds, which are not reported as cash pursuant to subsection (a). NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84211(e), Government Code.

### HISTORY

1. New section filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10)

### § 18421.1. Disclosure of the Making and Receipt of Contributions.

Except as otherwise provided by law, the following standards shall be applicable to contributions and expenditures:

- (a) A monetary contribution, including one made through wire transfer, credit card transaction, debit account transaction or similar electronic payment option (including one made via the Internet), is "made" on the date that the contribution is mailed, delivered, or otherwise transmitted to the candidate or committee. Alternatively, the date of the check or other negotiable instrument by which the contribution is made may be used in lieu of the date on which the contribution is mailed, delivered, or otherwise transmitted, provided it is no later than the date the contribution is mailed, delivered, or otherwise transmitted.
- (b) Notwithstanding subdivision (a), for purposes of the disclosure of late contributions, as defined in Government Code section 82036 and pursuant to Government Code section 84203, a monetary contribution is "made" on the date the contribution is mailed, delivered, or otherwise transmitted to the candidate or committee. Consistent with 2 Cal. Code Regs. section 18401, the candidate or committee shall maintain documentation to support the date the contribution was made.
- (c) A monetary contribution is "received" on the date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made. All contributions received by a person acting as an agent of a candidate or committee shall be reported to and disclosed by the candidate or committee, or by the committee's treasurer, no later than the closing date of the next campaign statement that the committee or candidate is required to file.
- (d) Notwithstanding subdivision (c) above, a monetary contribution collected by means of payroll deductions or membership dues by a membership organization for its sponsored committee pursuant to Government Code section 82048.7(b)(2) is "received" by the committee on the earlier of the following:
- (1) The date that the committee obtains actual possession or control of the contribution:
- (2) Within 60 days after the receipt of the payment by the committee's sponsor.

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- (e) Notwithstanding subdivision (c) above, a monetary contribution made through wire transfer, credit card transaction, debit account transaction or similar electronic payment option (including those made via the Internet) is "received" on the date the candidate or committee, or the agent of the candidate or committee, obtains possession or has control of the debit/credit account information or other payment information by which the contribution is made, or on the date the candidate or committee, or the agent of the candidate or committee, obtains possession or has control of the funds, whichever is earlier. In the case of installment payments, the contribution is received when the candidate or committee, or agent of the candidate or committee, obtains possession or control of the funds for each installment payment. The contribution reported is the amount of each installment payment.
- (f) A nonmonetary contribution is "made" by the contributor, and "received" by the candidate or committee, on the earlier of the following dates:
- (1) The date that funds are expended by the contributor for goods or services, if the specific expenditure is made at the behest of the candidate or committee:
- (2) The date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the goods or services, or the date that the candidate or committee otherwise receives the benefit of the expenditure.
- (g) The standards for when a contribution is "made" and "received" set forth in this section are not applicable where a contribution is disposed of pursuant to Government Code sections 84211(q), 84203(c), or 2 Cal. Code Regs. section 18531.

NOTE: Authority cited: Section 83112, Gov. Code. Reference: Sections 82015, 82025, 82048.7, 84203, 84211 and 84306, Gov. Code.

#### HISTORY

- 1. New section filed 3-10-92; operative 4-9-91 (Register 92, No. 13).
- 2. Editorial correction of subsection (f) (Register 96, No. 43).
- 3. Amendment filed 9–23–2004; operative 9–23–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).
- 4. Amendment of subsection (e) filed 11–6–2006; operative 12–6–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 45).

### § 18421.2. Street Address.

The term "street address" as used in Chapter 4 of Title 9 of the Government Code means the following:

- (a) The street name and building number, and the city, state, and zip code.
- (b) The Army and Air Force Post Office (A.P.O.) or Fleet Post Office (F.P.O.) address assigned by the United States government to an individual or a dependent who resides with the individual when the individual is on government duty outside the United States and does not have a conventional street address.

NOTE: Authority cited: Section 83112, Government Code. Reference: Chapter 4 of Title 9, Government Code.

### HISTORY

- New section filed 9-30-99; operative 9-30-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 40).
- Amendment of first paragraph, new subsections (a) and (b) and amendment of Note filed 12–13–2007; operative 1–12–2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 50).

# § 18421.3. Reporting of Contributions and Expenditures Collected by Contract Vendors or Collecting Agents.

(a) A candidate or committee may contract with a vendor or collecting agent to establish one or more accounts to collect contributions prior to transferring the funds to a campaign bank account. These contributions are deemed to be received by the candidate or committee upon receipt by

the vendor pursuant to rules set forth in 2 Cal. Code Regs. section 18421.1 and must be transferred to the candidate's or committee's campaign bank account "promptly" as defined in Government Code section 84306. The entire amount authorized by the contributor is the amount of the contribution. Any amounts deducted or charged by the vendor or collecting agent are deemed to be expenditures from the campaign bank account at the time the fees are deducted or charged.

(b) Nothing in this regulation should be construed to require the establishment of a bank account unless otherwise required by other provisions of this title. The provisions in subdivision (a) apply to candidates and their controlled committees, notwithstanding Government Code section 85201 and 2 Cal. Code of Regs. section 18524.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84211, 84306 and 85201, Government Code.

#### HISTORY

New section filed 12–18–2006; operative 1–17–2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (PPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18421.4. Reporting Cumulative Amounts for State Elections and State Recipient Committees.

- (a) When reporting cumulative amounts of contributions received or made as defined by Government Code section 82018 and pursuant to subdivisions (f), (g), (h), and (k) of Government Code section 84211, a committee as defined in subdivision (a) of Government Code section 82013 controlled by a candidate for elective state office also must disclose the cumulative total(s) of contributions received or made for each election
- (b) When reporting cumulative amounts of contributions made as defined by Government Code section 82018 and pursuant to subdivisions (g) and (k) of Government Code section 84211, a recipient committee as defined in subdivision (a) of Government Code section 82013 that makes contributions to candidates for elective state office also must disclose the cumulative total(s) of contributions made for each election.
- (c) When filing a campaign statement under Government Code sections 84200, 84200.3 or 84200.5, a candidate for elective state office who has accepted the applicable voluntary expenditure limit under Government Code sections 85400–85403 must disclose the cumulative total(s) of expenditures made for each election that are subject to the expenditure limit unless the candidate is no longer subject to the expenditure limit pursuant to Government Code section 85402.
- (d) This regulation does not apply to a candidate for statewide elective office, or the candidate's controlled committee for that office, in an election held before November 6, 2002. This regulation applies on and after November 6, 2002, to a candidate for statewide elective office, and the candidate's controlled committee for that office, in an election held on or after November 6, 2002.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82018, 84211, 85301, 85302, 85303, 85305, 85306, 85307, 85314, 85400, 85401, 85402 and 85403, Government Code.

### HISTORY

- 1. New section filed 6–19–2001 as an emergency; operative 7–19–2001. A Certificate of Compliance must be transmitted to OAL by 11–16–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 25).
- 2. Editorial correction of HISTORY 1 (Register 2001, No. 29).
- 3. Editorial correction of HISTORY 1 (Register 2002, No. 5).
- Repealed by operation of Government Code section 11422.1, 1974 Administrative Procedure Act (Register 2002, No. 5).
- 5. New section filed 1–31–2002; operative 3–2–2002. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2002, No. 5).

### § 18421.6. Reporting Accrued Expenses.

- (a) Accrued expenses (excluding loans) owed by a recipient committee which remain outstanding shall be reported on each campaign statement until extinguished.
- (b) An accrued expense (excluding a loan) shall be reported as of the date on which the goods or services are received, except that any obligation incurred for a regularly recurring administrative overhead expense (e.g., rent, utilities, phones, campaign workers' salary) shall not be reported as an accrued expense before the payment due date. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82025 and 84211(j), Government Code.

#### HISTORY

1. New section filed 9–30–99; operative 9–30–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 40).

### § 18421.7. Reporting an Expenditure for a Gift, a Meal, or Travel

- (a) When reporting an itemized expenditure under Section 84211(k) or Section 84303 for a gift, a meal, or travel, a committee controlled by a candidate shall briefly describe the political, legislative, or governmental purpose of the expenditure and the following:
- (1) For an itemized expenditure on a gift, the date of the gift, the nature of the gift, and if made to an individual recipient, the name of the recipient, or if made to a group of recipients, the name of each recipient who received a benefit of \$50 or more.
- (2) For an itemized expenditure on a meal, other than a meal reported as an expenditure for travel, the date of the meal, the number of individuals for whom the expenditure was paid, and whether these individuals included the candidate, a member of the candidate's "household" as defined by Section 89511(b)(4), or an individual with the authority to approve expenditures of the committee's campaign funds.
- (3) For an itemized expenditure on travel, including lodging or a meal, the date or dates of travel, the destination, the goods or services paid for by the expenditure, the number of individuals for whom the expenditure was paid, and whether these individuals included the candidate, a member of the candidate's "household" as defined by Section 89511(b)(4), or an individual with authority to approve expenditures of the committee's campaign funds.
- (b) A committee required to identify the recipient of a gift under subdivision (a)(1) that has not determined the recipient prior to the closing date of the reporting period in which it made the expenditure for the gift shall identify the recipient as "undetermined recipient" on the committee's campaign disclosure statement, and shall amend the statement to disclose the name of the recipient within 45 calendar days of the date the recipient receives the gift if the benefit to the recipient is \$50 or more.
- (c) The reporting requirements of this Regulation are in addition to the reporting requirements of Section 84211(k)(1), (2), (3), (5), and (6). NOTE: Authority cited: Sections 83112, 84211(k) and 84303, Government Code. Reference: Sections 84211, 84303, 89510, 89511, 89512 and 89513, Government Code.

### HISTORY

 New section filed 6-11-2008; operative 7-1-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 24).

### § 18423. Payments for Personal Services as Contributions and Expenditures.

(a) The payment of salary, reimbursement for personal expenses, or other compensation by an employer to an employee who spends more than 10% of his compensated time in any one month rendering services

- for political purposes is a contribution, as defined in Government Code Section 82015 and 2 Cal. Adm. Code Section 18215, or an expenditure, as defined in Government Code Section 82025 and 2 Cal. Adm. Code Section 18225, by the employer if:
- (1) The employee renders services at the request or direction of the employer; or
- (2) The employee, with consent of the employer, is relieved of any normal working responsibilities related to his employment in order to render the personal services, unless the employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity.
- (b) Personal services are rendered for political purposes if they are carried on for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the qualification or passage of any measure, and include but are not limited to:
- (1) Personal services received by or made at the behest of a candidate or committee by an employee; and
- (2) Hours spent developing or distributing communications that expressly advocate the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure.
- (c) The amount of the contribution or expenditure reportable pursuant to this regulation is the pro-rata portion of the gross salary, reimbursement for personal expenses or compensation attributable to the time spent on political activity.
- (d) This regulation does not affect the obligation of an employer or any other person to report expenditures and contributions other than the salary, reimbursement for personal expenses, or compensation for personal services of an employee.
- (e) Notwithstanding the provisions of subsection (a), salary, reimbursement for personal expenses and compensation paid to an employee by an employer who has contracted to provide services to a candidate or committee are not contributions or expenditures by the employer, provided that the services rendered by the employee are not beyond the scope of the contract. This paragraph does not affect any reporting obligation imposed by Government Code Section 84303.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025 and 84211, Government Code.

### HISTORY

- 1. New section filed 5–10–76; effective thirtieth day thereafter (Register 76, No. 20).
- 2. Editorial correction (Register 77, No. 22).
- 3. Editorial correction of section title filed 1-9-81 (Register 81, No. 2).
- 4. Amendment of section heading filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- 5. Editorial correction of Reference cite (Register 95, No. 17).

### § 18425. Late Contributions; Reports.

- (a) Whenever a candidate or committee is required to file a late contribution report with the Secretary of State pursuant to Government Code Section 84203, the report shall include the date of the election. This provision shall not apply to reports of late contributions made to a state candidate or committee or a committee primarily formed to support or oppose a state candidate or state measure.
  - (b) Late Non-Monetary Contributions.
- (1) When more than one non-monetary contribution will be made by or received from a single contributor during the late contribution reporting period, a candidate or committee may, on or before the deadline specified in Government Code section 84203 or 84203.3, file a single late contribution report covering the entire late contribution period disclosing:
- (A) The total value of non-monetary contributions that will be made by or received from the contributor during the period; or
- (B) If the actual value of non-monetary contributions is not known at the time of filing, a good faith estimate of the value that will be contributed or received during the period. If the value of late non-monetary contributions differs from the estimated amount by 20 percent or more, the

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estimated report must be amended within 24 hours from the time the candidate or committee knows that the estimated value is incorrect.

(2) On the candidate or committee's next campaign statement filed pursuant to Government Code section 84200, 84200.5, 84202.3, 84202.5, or 84202.7, the actual value of all late non-monetary contributions shall be disclosed.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82036 and 84203, Government Code.

### HISTORY

- 1. New section filed 1–25–84; effective thirtieth day thereafter (Register 84, No. 4).
- New section refiled 3–26–84 correcting inadvertent omission of subsection (b); effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 13).
- 3. Amendment of subsection (a) filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
- 4. Amendment of subsection (a) and repealer and new subsections (b)–(b)(2) filed 11–20–98; operative 11–20–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 47).

### § 18426. Semi-Annual Statement Early Filing.

Whenever a person is required to file a semi-annual campaign statement pursuant to Government Code Section 84200, that person may file the statement at any time prior to the date the statement is due so long as the statement includes all expenditures and contributions made or received during the period specified by Section 84200. If the filer makes expenditures or receives contributions after filing the semi-annual statement, but prior to the closing date prescribed in Government Code Section 84200, the filer must, not later than the time specified in Section 84200, amend the filed statement to include all such expenditures and contributions.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84200, Government Code.

### HISTORY

- 1. New section filed 6–17–76; effective thirtieth day thereafter (Register 76, No. 25). For history of former Section, see Register 76, No. 14.
- 2. Repealer and new section filed 10-29-76; effective thirtieth day thereafter (Register 76, No. 44).
- 3. Editorial correction (Register 77, No. 22).
- 4. Amendment filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- 5. Amendment filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10).

### § 18426.1. Assistant Treasurer.

Pursuant to Government Code section 84100, every recipient committee shall have a treasurer, and may designate, on the committee's statement of organization, one assistant treasurer. The assistant treasurer may sign and verify campaign statement(s) on behalf of the committee which he or she has used reasonable diligence to prepare and review, and signs to that effect under penalty of perjury as required by Government Code section 81004. With respect to statements signed by the assistant treasurer, the treasurer and assistant treasurer shall be jointly and severally liable for any violations for which the Political Reform Act would otherwise hold the treasurer liable. The assistant treasurer shall assume the duties and responsibilities of the treasurer as set forth in the Political Reform Act and Commission regulations (including Title 2, California Code of Regulations sections 18401 and 18427) in the event of a temporary vacancy in the office or in the event the treasurer is unavailable. Notwithstanding this regulation, a committee may not accept a contribution or make an expenditure at a time when there is a vacancy in the office of

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81004, 84100 and 84104, Government Code.

### HISTORY

 New section filed 9–30–99; operative 9–30–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 40).

### § 18427. Duties of Treasurers and Candidates with Respect to Campaign Statements.

- (a) Treasurers. The treasurer of a committee must verify that to the best of his or her knowledge the committee campaign statements are true and complete and must use all reasonable diligence in the preparation of such statements. To comply with these duties the treasurer shall:
- (1) Establish a system of record keeping sufficient to ensure that receipts and expenditures are recorded promptly and accurately, and sufficient to comply with regulations established by the Commission related to record keeping;
- (2) Either maintain the records personally or monitor such record keeping by others;
- (3) Take steps to ensure that all requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds are complied with;
- (4) Either prepare campaign statements personally or review with care the campaign statements and underlying records prepared by others;
- (5) Correct any inaccuracies or omissions in campaign statements of which the treasurer knows, and cause to be checked, and, if necessary, corrected, any information in campaign statements which a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer is aware or should be aware by reason of his or her duties under this regulation and the Act.
- (b) Candidates with respect to candidate campaign statements. A candidate must verify that to the best of his or her knowledge his or her own campaign statements are true and complete and must use all reasonable diligence in the preparation of such statements. To comply with these duties the candidate shall be subject to the same duties imposed upon treasurers as stated in (a) above.
- (c) Candidates with respect to campaign statements of committees they control. A candidate must verify to the best of his or her knowledge that the campaign statements filed by a committee he or she controls are true and complete and that the treasurer has used all reasonable diligence in preparation of such campaign statements. To comply with these duties, the candidate shall:
- (1) Ascertain whether the treasurer is exercising all reasonable diligence in the performance of his or her duties including those duties specified under (a);
- (2) Take whatever steps are necessary to replace the treasurer or raise the treasurer's performance to required standards, if the candidate knows or has reason to know that the treasurer is not exercising all reasonable diligence in the performance of his or her duties;
- (3) Review with care the campaign statements prepared for filing by the committee:
- (4) Correct any inaccuracies and omissions in campaign statements of which the candidate knows, and cause to be checked, and, if necessary, corrected, any information in campaign statements which a person of reasonable prudence would question based on all the surrounding circumstances of which the candidate is aware or should be aware by reason of his or her duties under this regulation and the Act;
- (5) Perform with due care any other tasks assumed in connection with the raising, spending or recording of campaign funds insofar as such tasks relate to the accuracy of information entered on campaign statements;
- (6) Unless such steps are required to meet the standards set forth in the foregoing paragraphs (1) through (4), a candidate is not responsible for establishing a record keeping procedure for a committee, monitoring committee record keeping, reviewing campaign finance records other than campaign statements, or personally taking steps to corroborate any information contained on a campaign statement.
- (d) Committees where no treasurer is designated. If a committee fails to designate a treasurer as required by Government Code Section 84100, the person who is primarily responsible for initiating and implementing the political activity of the committee will be considered the treasurer and will be subject to all the duties set forth in paragraph (a) of this regulation.

COMMENT. This regulation sets out the duties of candidates and treasurers only with respect to campaign statements. Among the duties imposed by this regulation on candidates and treasurers with respect to committee campaign statements is to "cause to be checked, and, if necessary, corrected, any information . . . which a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer [candidate] is aware or should be aware by reason of his or her duties under this regulation and the Act." The circumstances that trigger a duty to inquire under this standard are limited to those actually known to the candidate or treasurer and to those of which he or she should be aware by carrying out his or her duties under the Act and regulation. They do not include circumstances a candidate or treasurer "might" or "should have known" if he or she had gone beyond his or her required duties. For example, Mr. Jones may give Mr. Smith \$100 in cash and instruct him to write a check to the candidate's controlled committee and to conceal the true source of the contribution. The committee reports the contribution as received from Smith. If neither the candidate nor treasurer has any knowledge concerning the questionable nature of the contribution and neither, through performance of their respective duties (such as monitoring campaign records or reviewing campaign statements), could have learned any facts that would lead one to question the contribution, the candidate and treasurer have no duty of inquiry with respect to the contribution. There is no duty of inquiry even though if Smith were asked he would have revealed the true source of the funds.

Once the known circumstances are such that a question is raised concerning the accuracy of information on a campaign statement, an inquiry is required. It is not possible in a regulation to describe with particularity every factual situation that might trigger such an inquiry since the variety of circumstances that could arise with respect to any particular campaign transaction are endless. By way of example, however, such circumstances might include the following in the case of a contribution: The size of the contribution, the reported source, the likelihood of that source making a contribution of the size reported, the circumstances surrounding receipt, and the manner in which the contribution is recorded in campaign records.

The burden of inquiry is likely to fall more heavily upon the treasurer because it is he, rather than the candidate, upon whom the major record keeping and reporting responsibility falls. Therefore, the treasurer is more likely than the candidate to be the person who, by reason of performance of duties, is aware of or should be aware of facts which would give rise to a duty of inquiry.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81004, 84100, 84213 and 91004, Government Code.

### HISTORY

- 1. New section filed 12–13–77 as an emergency; effective upon filing (Register 77, No. 51). For prior history, see Register 77, No. 17.
- 2. Repealed 4–13–78 by operation of Section 11422.1(c), Government Code. (Register 79, No. 16).
- 3. New section filed 4–20–79; effective thirtieth day thereafter (Register 79, No. 16)
- 4. Amendment of subsection (d) filed 1-25-80; effective thirtieth day thereafter (Register 80, No. 4).
- 5. Editorial correction of section title filed 1-9-81 (Register 81, No. 2).
- 6. Amendment of section heading filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).

### § 18427.1. Notification to Contributors of \$5,000 or More.

- (a) A candidate or committee that receives contributions cumulating \$5,000 or more in a calendar year from a single source shall, within two weeks of receiving such contributions, provide notice to the contributor that the contributor may be required to file campaign reports.
- (b) The notice shall contain the following language or substantially similar language:

If your contribution(s) to this committee and to other California state or local committees total(s) \$10,000 or more in a calendar year, California law requires you to file a Major Donor Committee Campaign Statement (Form 461). The deadline and location for filing this statement will depend upon the timing and type of contribution(s) you have made. In addition, once you become a major donor, you are required to file a late contribution report within 24 hours if you make contributions totaling \$1,000 or more to a single candidate, any of the candidate's controlled committees, or to a committee primarily formed to support or oppose a candidate or ballot measure during the 16 days before the election in which the candidate or ballot measure is being voted on, or make contributions totaling \$1,000 or more to state or county political party committees during the 16 days prior to a state election.

Failure to file campaign statements may result in late filing penalties (\$10/day) and fines (up to \$5,000/violation). For more information, contact the Fair Political Practices Commission toll–free at (866) ASK–FPPC or refer to their website: www.fppc.ca.gov.

Additionally, if you make contributions of \$50,000 or more in a calendar year in California and some or all of those contributions are to state candidates, committees or ballot measures, you are required to file your Form 461 electronically with the Secretary of State. For more information on the electronic filing requirements, contact the Secretary of State's office at (916) 653–6224.

- (c) Candidates and treasurers shall maintain a record of all notices sent pursuant to this section, containing the date of each notice and the name and address of the person to whom each notice is sent.
  - (d) Notice to a contributor is not required if:
- (1) A notice has previously been sent to the contributor pursuant to this section in the same calendar year; or
- (2) The contributor has been issued a recipient committee identification number by the Secretary of State.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84105, Government Code.

### HISTORY

- 1. New section filed 1–8–86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Amendment of subsections (a) and (b) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 3. Amendment of subsections (b) and (d)(1)–(2) and repealer of subsection (d)(3) filed 4–20–2000; operative 4–20–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 16).
- 4. Editorial correction of subsection (b) (Register 2001, No. 11).
- Change without regulatory effect amending subsection (b) filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26)
- 6. Amendment of subsection (b) filed 1–14–2004; operative 1–14–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 3).
- 7. Amendment of subsection (b) filed 10–11–2005; operative 11–10–2005 (Register 2005, No. 41).

### § 18428. Reporting of Contributions and Independent Expenditures Required to be Aggregated.

- (a) Whenever a monetary threshold identified in Chapter 4 and Chapter 5 of the Political Reform Act has been met or exceeded, contributions and independent expenditures from different sources that are aggregated and treated as if received from a single person shall be reported as follows:
  - (b) Major Donor and Independent Expenditure Committees:
- (1) Any committee pursuant to Government Code section 82013(b) or (c) that is required to aggregate contributions under 2 Cal. Code of Regs. section 18215.1 or independent expenditures under 2 Cal. Code of Regs. section 18225.4 shall file its campaign statement reflecting the total aggregated amount of the contributions or independent expenditures made for the required reporting period. The campaign statement shall be filed in the name of an individual or one of the contributing entities that directs and controls the making of the payments of the entity or entities whose contributions or independent expenditures are required to be aggregated. The filer shall indicate in the campaign statement under the "name of filer" that the campaign statement includes the aggregated activities of other entities directed and controlled by the filer (e.g., (name of filer) "including aggregated contributions/independent expenditures"). In itemizing the amount of each contribution or independent expenditure made, the campaign statement must also identify the name of the entity making the contributions or independent expenditures for each itemized payment made. The filer shall also identify on each campaign statement it is required to file the addition or deletion of any entity, other than a committee pursuant to Government Code section 82013(a), with which the filer is required to aggregate contributions or independent expenditures. If the committee has filed a previous campaign statement that did not require aggregation and it was filed in a name other than the required name of the filer for reporting aggregated contributions or independent expenditures as set forth above, the subsequent report shall include under the name of filer the former name under which the report was filed (e.g.,

(name of filer) formerly (name of individual only) or (name of entity only).

- (2) Whenever any person identified in this subdivision makes a contribution that is subject to aggregation to a committee that is required to report the contribution on its own campaign statements, the person making the contribution shall notify the recipient committee of the "name of filer" under which the contribution is being reported on that person's statement.
  - (c) Recipient Committees:
- (1) Contributions Received: Whenever any person that is a committee pursuant to Government Code section 82013(a) files its campaign statement under the reporting provisions of Chapter 4 or Chapter 5 of the Political Reform Act disclosing a contribution received from a committee described in subdivision (b) of this regulation, it shall report the contribution as received from the contributor and additionally include the "name of filer" of the major donor committee that will report this contribution as provided under subdivision (b)(2) above (e.g., (name of contributor/name of filer)).
- (2) Reporting Contributions and Independent Expenditures Made: Whenever any person who is a committee pursuant to Government Code section 82013(a) files any campaign statement that is required under the reporting provisions of Chapter 4 or Chapter 5 of the Political Reform Act disclosing contributions or independent expenditures made by that committee, and the contributions or independent expenditures are subject to aggregation, those contributions or independent expenditures shall be identified on its report as a payment that is subject to aggregation and reported to the recipient in the same manner as set forth for major donor and independent expenditures committees in subdivision (b) above. (See Government Code section 84211(k)(5).)
- (d) The notification requirements of subdivision (b)(2) of this regulation are not applicable to contributions made by a sponsor to its sponsored committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 84211 and 85311, Government Code.

### HISTORY

- 1. New section filed 6-1-79; effective thirtieth day thereafter (Register 79, No. 22).
- 2. Amendment of section title and subsections (a) and (c) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2)
- Amendment of section heading filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- Amendment of subsection (c) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43). Amendment filed 11–10–97; operative 11–10–97 pursuant to Government
- Code section 11343.4(d) (Register 97, No. 46).
- 6. Amendment of subsections (a) and (b), repealer of subsection (c), subsection relettering and amendment of Note filed 12–27–2001 as an emergency; operative 12–27–2001 (Register 2001, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-24-2002 or emergency language will be repealed by operation of law on the following day
- 7. Amendment of subsections (b)–(e) and new subsection (f) filed 5–13–2002; operative 4–25–2002 (Register 2002, No. 20).
- Repealer and new section heading and amendment of section filed 4-4-2006; operative 5-4-2006 (Register 2006, No. 14).
- 9. Editorial correction of subsection (b)(2) (Register 2006, No. 19).

### § 18429. Providing a Procedure to Obtain an Exemption from Reporting and Disclosure Requirements (84102, 84210(g), 84210(h), 84210(j), 84210(k), 84214). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84102, 84210(g), 84210(h), 84210(j), 84210(k), 84214, and 84300, Government

### HISTORY

- 1. New section filed 5-10-76; effective thirtieth day thereafter (Register 76, No.
- 2. Editorial correction in Section 18429 (Register 76, No. 34)
- Amendment of subsection (a) filed 1–21–77 as an emergency; effective upon filing (Register 77, No. 4).
- 4. Reinstatement of subsection (a) as it appeared prior to the filing of 1-21-77 by operation of Section 11422.1(b), Government Code (Register 77, No. 51).
- 5. Repealer filed 6-22-78; effective thirtieth day thereafter (Register 78, No. 25).

### § 18430. Committees Controlled by More Than One Candidate.

- (a) If a committee other than a legislative caucus committee is controlled by more than one candidate:
- (1) The name of each controlling candidate must be listed on the statement of organization;
- (2) The name of each controlling candidate must be listed on the cover sheet of every campaign statement filed by the committee;
- (3) Each controlling candidate must list the name of the committee, indicating that it is a controlled committee of that candidate, on the cover sheet of every campaign statement filed by the candidate;
- (4) The campaign statements of the controlled committee cannot be combined or consolidated with the campaign statements of any controlling candidate.
- (b) If a committee other than a legislative caucus committee is controlled by more than one candidate, all campaign statements filed by the committee shall be signed and verified by:
- (1) All the controlling candidates in the case of a committee controlled by two or three candidates;
- (2) One of the controlling candidates, on behalf of all the controlling candidates, in the case of a committee controlled by more than three candidates.
  - (c) In the case of a legislative caucus committee:
- (1) The statement of organization must list the legislative caucus as controlling the committee;
- (2) Each campaign statement of the committee must indicate that it is controlled by the caucus, and must be signed and verified by the caucus chairman on behalf of the caucus.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84102 and 84211, Government Code.

### HISTORY

1. New section filed 3-21-84; effective thirtieth day thereafter (Register 84, No. 12).

### § 18431. Reporting of Expenditures by an Agent or Independent Contractor.

- (a) The following expenditures, and all similar expenditures, when made by an agent or independent contractor, including any vendor or subvendor, on behalf of or for the benefit of a candidate or committee, must be reported under Government Code Section 84303. Expenditures not of the types included below do not have to be reported. Expenditures which must be reported include:
- (1) Expenditures to any person, other than an employee of the agent or independent contractor, for expert advice, expert analysis, or campaign management services, including but not limited to analysis, advice, or management services in connection with:
  - (A) Development of campaign strategy;
  - (B) Campaign management;
  - (C) Design or management of campaign literature or advertising;
  - (D) Campaign fund raising.
- (2) Expenditures to any person, other than an employee of the agent or independent contractor, who furnishes the candidate or committee with products or services which show how the campaign is conducted, including but not limited to expenditures for:
  - (A) Printed campaign literature;
  - (B) Advertising time or space;
  - (C) Campaign buttons and other campaign paraphernalia;
- (D) Surveys, polls, signature gathering and door-to-door solicitation of voters;
  - (E) Facilities, invitations, or entertainment for fundraising events;
  - (F) Postage for campaign mailings.
  - (3) Any expenditures:
  - (A) To the candidate;
- (B) To any person for the personal use of the candidate, or his or her family;
  - (C) Which are gifts to any person;
  - (D) To or on behalf of any other candidate or committee;

- (E) To printers of mass mailings;
- (F) To any person who transfers funds to any other person for expenditures which are reportable under this section;
- (G) For any commission, finder's fee or rebate provided to any person in connection with any expenditure reportable under this section if the commission, finder's fee or rebate is inconsistent, in either manner or amount, with customary industry practice.
- (b) Expenditures which are made directly from a candidate's or committee's account, are charged to the candidate's or committee's credit, or are reimbursed to a committee employee from the candidate's or committee's account do not have to be reported under Government Code Section 84303.
- (c) An expenditure which is required to be reported by Government Code Section 84303 must be reported by the candidate or committee at the same time and in the same manner and detail as required under Government Code Section 84211 for the candidate's or committee's direct expenditures.
- (d) An agent or independent contractor who makes an expenditure on behalf of or for the benefit of a candidate or committee which is required to be reported under Government Code Section 84303 shall make known to the candidate or committee all the information required for reporting the expenditure under Government Code Section 84211. A subagent or subvendor may make the report required by this section to his or her principal, who shall then report the expenditure to the committee or candidate. An agent or independent contractor shall report all expenditures required to be reported under Government Code Section 84303 no later than three working days prior to the time the campaign statement reporting the expenditure is required to be filed, except that an expenditure which must be reported under Government Code Sections 84203 or 84204 shall be reported to the candidate or committee within 24 hours of the time it is made.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84303, Government Code.

### HISTORY

- 1. New section filed 8-10-84; effective thirtieth day thereafter (Register 84, No. 32).
- 2. Amendment of subsection (a)(2)(G), repealer of subsection (d) and relettering of subsection (e) to subsection (d) filed 1–4–85; effective thirtieth day thereafter (Register 85, No. 1).
- 3. Amendment of subsection (c) filed 6–17–85, effective thirtieth day thereafter (Register 85, No. 25).
- 4. Amendment of subsection (d) filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).

### § 18432. Reporting Cumulative Contributions and Expenditures for Each Fiscal Year. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 84211, 85102 and 85301-85303, Government Code.

### HISTORY

- 1. New section filed 4-24-89; operative 5-24-89 (Register 89, No. 18).
- Amendment filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- 3. Repealer filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18432.5. Intermediary.

- (a) For purposes of Government Code Sections 84302, a person, as defined in Government Code Section 82047, is an intermediary for a contribution if any of the following applies:
- (1) The recipient of the contribution would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution.
  - (2) The person is an intermediary pursuant to Regulation 18419.
- (b) Any person who qualifies as an intermediary for the making of a contribution shall disclose to the recipient of the contribution both his or her own full name and street address, occupation, and the name of his employer, if any, or his or her principal place of business if he or she is self—employed, and the full name and street address, occupation, and the name

- of employer, if any, or principal place of business if self-employed, of the contributor.
- (c) The recipient of the contribution shall include in his or her campaign statement the name of the intermediary and other information disclosed pursuant to Government Code Section 84302 and subdivision (b) of this section, if the recipient knows or has reason to know that a contribution is made by an intermediary.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84302, Government Code.

### HISTORY

- 1. New section filed 2-8-90; operative 3-10-90 (Register 90, No. 7).
- 2. Amendment of subsection (a), repealer of subsections (a)(3), (b)–(b)(2), (c)–(c)(7)(B) with subsection relettering, and amendment of newly designated subsections (b) and (c) filed 6–23–92; operative 7–23–92 (Register 92, No. 26).

### § 18435. Definition of Mass Mailing and Sender.

- (a) A "mass mailing" has been made when over two hundred substantially similar pieces of mail have been sent within a calendar month.
- (b) The sender, as used in Government Code Section 84305, is the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing, and posting of the mailing which are reportable under Government Code Sections 84200–84217.
- (c) For purposes of this section to "pay for" a share of the cost of a mass mailing means to make, to promise to make, or to incur an obligation to make, any payment:
- (1) To any person for the design, printing, postage, materials or other costs (including salaries, fees, or commissions) of the mailing; or
- (2) As a fee or other consideration for an endorsement or, in the case of a ballot measure, support or opposition, in the mailing.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82041.5 and 84305, Government Code.

### HISTORY

- 1. New section filed 6–17–76; effective thirtieth day thereafter (Register 76, No. 25).
- 2. Amendment filed 2–17–82; effective thirtieth day thereafter (Register 82, No. 8).
- 3. Amendment filed 12–15–83; effective thirtieth day thereafter (Register 83, No. 51)
- 4. Amendment of subsection (a) filed 7–28–92; operative 8–27–92. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 92 No. 31)

### § 18438. Contributions to Members of Quasi-Judicial Boards and Commissions. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

### HISTORY

- New section filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5).
- 2. Repealer filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).

### § 18438.1. Officers and Agencies Under Government Code Section 84308.

- (a) The officers of an agency exempted by Government Code Section 84308(a)(3) are exempted only when:
- (1) They are acting as members of the governing body of the agency, and the body is acting in its entirety as itself or as the ex officio governing body of any other agency. This applies to a city council or board of supervisors which designates itself as the redevelopment agency for the city or county; or
- (2) They are acting as members of any committee or subgroup of the governing body of the agency which is composed solely of members of the governing body of the agency.
- (b) The exemption for the officers of local governmental agencies who are directly elected by the voters applies only to agencies whose entire membership consists of officers directly elected by the voters to serve on that agency.
- (c) "Alternate" means any person designated to serve as an officer of an agency who has served at least once in the preceding three months, or who knows or has reason to know that he or she will serve as an officer of the agency in the next three months.

- (d) An officer of an agency includes only those persons who:
- (1) Serve as members of governmental boards and commissions; or
- (2) Serve as the head of an agency. A member of the Governor's Cabinet is not an officer under Government Code Section 84308 when he or she is acting in the capacity of agency secretary; however, the person is an officer when he or she acts as a department director or as a member of any board or commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

#### HISTORY

- 1. New section filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5).
- 2. Amendment filed 3–12–84; effective thirtieth day thereafter (Register 84, No. 11).
- 3. Amendment filed 2–22–85; effective thirtieth day thereafter (Register 85, No. 8).
- Editorial correction of section heading filed 5-6-85; effective thirtieth day thereafter (Register 85, No. 19).

### § 18438.2. Proceedings Under Government Code Section 84308.

- (a) For purposes of Government Code Section 84308, a "proceeding involving a license, permit or other entitlement for use" includes any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use.
- (b) A proceeding involving a license, permit or other entitlement for use is "pending before" an agency:
- (1) When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action;
- (2) It is the type of proceeding where the officers of the agency are required by law to make a decision, or the matter has been otherwise submitted to the officers of the agency for their decision; and
- (3) The decision of the officer or officers with respect to the proceeding will not be purely ministerial.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

### HISTORY

- 1. New section filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5).
- 2. Amendment filed 11–10–83; effective thirtieth day thereafter (Register 83, No. 46)
- 3. Amendment filed 2–22–85; effective thirtieth day thereafter (Register 85, N. 8).

### § 18438.3. Agents Under Government Code Section 84308.

- (a) For purposes of Government Code Section 84308, a person is the "agent" of a party to, or a participant in, a proceeding involving a license, permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use. If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."
- (b) To determine whether a contribution of more than \$250 has been made by a person or his or her agent, contributions made by that person within the preceding 12 months shall be aggregated with those made by his or her agent within the preceding 12 months or the period of the agency relationship, whichever is shorter.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

### HISTORY

- 1. Amendment filed 2–22–85; effective thirtieth day thereafter (Register 85, No. 8).
- 2. Editorial correction of Reference cite (Register 95, No. 17).
- 3. Amendment of subsection (b) filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).

### § 18438.4. Participants Under Government Code Section 84308.

For purposes of Government Code Section 84308,

- (a) A person "lobbies in person" when he or she communicates directly, either in person or in writing, with an officer of an agency for the purpose of influencing the decision in a proceeding.
- (b) A person "testifies in person" when he or she testifies or makes an oral statement before an agency during a proceeding on a license, permit or other entitlement for use for the purpose of influencing the decision of the agency.
- (c) A person "otherwise acts to influence" officers of an agency when he or she communicates with an employee of the agency, or when his or her agent lobbies in person, testifies in person or otherwise communicates with officers or employees of the agency, for the purpose of influencing the officers' decision in a proceeding.
- (d) A person does not lobby, testify or otherwise act to influence the officers or employees of an agency by communications made to the public, other than those made in the proceedings before the agency.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

### HISTORY

- 1. New section filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5).
- 2. Amendment filed 2–22–85; effective thirtieth day thereafter (Register 85, No. 8).

### § 18438.5. Aggregated Contributions Under Government Code Section 84308.

For purposes of Government Code section 84308:

Notwithstanding the provisions of 2 Cal. Code Regs. section 18215.1, to determine whether a contribution of more than \$250 has been made by any party to a proceeding, contributions made by a party's parent, subsidiary, or otherwise related business entity, (as those relationships are defined in 2 Cal. Code of Regs. section 18703.1(d)) shall be aggregated and treated as if received from the party for purposes of the limitations and disclosure provisions of Government Code section 84308.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

### HISTORY

New section filed 5-26-2006; operative 6-25-2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 21). For prior history of section 18438.5, see Register 85, No. 8.

# § 18438.6. Solicitation, Direction, and Receipt of Contributions Under Government Code Section 84308.

For purposes of Government Code Section 84308,

- (a) A person "accepts" or "receives" a contribution only if the contribution is for that person's own candidacy or own controlled committee.
- (b) A person "makes a contribution" to an officer or candidate only if the contribution is made for that officer's or candidate's own candidacy or controlled committee.
- (c) An officer "solicits" a contribution only if he or she knows or has reason to know that the person being solicited for a contribution is a party or agent of a party, or is a participant or agent of a participant and either:
- (1) The officer or candidate personally requests a contribution for his or her own campaign or controlled committee, or for any other candidate, public official or committee, either orally or in writing; or
- (2) The agent of the officer or candidate with the officer or candidate's knowledge, requests a contribution for the officer or candidate's own campaign or controlled committee.
- (d) Notwithstanding subsection (c), a solicitation does not include a request made in a mass mailing sent to members of the public, to a public gathering, or published in a newspaper, on radio or TV, or in any other mass media

A person does not "solicit" solely because his or her name is printed with other names on stationery or a letterhead used to request contributions.

(e) A person "directs" a contribution if he or she acts as the agent of another person or of a committee other than his or her own controlled committee in accepting a contribution on behalf of, or transmitting a contribution to, such other person or committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

#### HISTORY

- 1. New section filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5).
- 2. Amendment filed 2–22–85; effective thirtieth day thereafter (Register 85, No. 8).

### § 18438.7. Prohibitions and Disqualification Under Government Code Section 84308.

For purposes of Government Code Section 84308,

- (a) An officer knows or has reason to know that a person has a financial interest in the decision in a proceeding if:
  - (1) The person is a party; or
- (2) The person is a participant and reveals facts in his or her written or oral support or opposition before the agency which make the person's financial interest apparent.
- (b) An officer knows, or should have known, about a proceeding pending before the agency if either:
- (1) The officer has received notice of the license, permit or other entitlement proceeding. Notice includes receipt of an agenda or docket identifying the proceeding and the party or other persons affected by name; or
  - (2) The officer has actual knowledge of the proceeding.
  - (c) An officer knows, or should have known about a contribution if:
- (1) The contribution has been disclosed by the party pursuant to Section 84308(d); or
  - (2) The officer has actual knowledge of the contribution.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

#### HISTORY

- 1. New section filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5)
- 2. Amendment filed 2–22–85; effective thirtieth day thereafter (Register 85, No.

### § 18438.8. Disclosure Under Government Code Section 84308.

- (a) An officer who is required by Government Code section 84308(c) to disclose the receipt of a contribution shall make the disclosure on the public record at the beginning of a public hearing in a proceeding involving the license, permit, or other entitlement for use, if a hearing is held. If there is no public hearing, the disclosure shall be entered into the written record of the proceeding.
- (b) Any party to a proceeding pending before an agency under Government Code section 84308(a) shall disclose on the record of the proceeding the names of any persons whose contributions are required to be aggregated, if the person has made a contribution to any officer of the agency as defined in Government Code section 84308(a)(4). The disclosure shall be made at the time the application is filed, or the proceeding is otherwise commenced, if the contribution was made during the twelve month period preceding the filing of the application or commencement of the proceeding, or no later than 30 days after the contribution is made if the contribution is made at any stage during the proceeding.
- (c) The disclosure shall include the name of the party and any other person making the contribution, if any, the name of the recipient, the amount of the contribution, and the date the contribution was made.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84308, Government Code.

#### HISTORY

- 1. New section filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5).
- 2. Amendment filed 2–22–85; effective thirtieth day thereafter (Register 85, No. 8).

3. Amendment of section and Note filed 5–26–2006; operative 6–25–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 21).

#### § 18439. Definition of "Personally Deliver."

For the purposes of Government Code Section 84309(b)(1), the term "personally deliver" shall:

- (a) Include the delivery of a copy or facsimile of a contribution, or the delivery of an original or a copy of a transmittal letter of a contribution.
- (b) Not include the delivery of a contribution by the United States Post Office.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84309, Government Code.

#### HISTORY

1. New section filed 12–15–83; effective thirtieth day thereafter (Register 83, No. 51).

#### § 18440. Telephone Advocacy.

For the purposes of Government Code Section 84310:

- (a) A candidate, committee, or slate mailer organization "expends campaign funds" to pay for a telephone call if either of the following applies:
- (1) A candidate or committee makes an expenditure for the call reportable under Government Code, Title 9, Chapter 4 (Sections 84100, et seq.) or a person makes a payment for the call at the behest of the candidate or committee and that payment is a contribution to the candidate or committee under Government Code Section 82015.
- (2) A slate mailer organization pays for the call after receiving a payment to make the call that qualifies as an expenditure of campaign funds by a candidate or committee under subdivision (a)(1) of this regulation.
- (b) A required disclosure statement shall identify at least one candidate, committee, or slate mailer organization "paying for" the call or at least one candidate or committee "authorizing" the call and shall state that the call is "paid for" or "authorized" by the identified candidate, committee, or slate mailer organization.
  - (c) For purposes of subdivision (b) of this regulation:
- (1) A candidate, committee, or slate mailer organization "pays for" a call when it pays directly for the call or pays another person to make the call on its behalf.
- (2) A candidate or committee "authorizes" a call if a person pays for the call at the behest of the candidate or committee and that payment is a contribution to the candidate or committee under Government Code Section 82015.
- (d) Each candidate, committee, and slate mailer organization paying for and each candidate and committee authorizing a call requiring a disclosure statement shall maintain a record of the script of the call, and a copy of the recording of any recorded messages, for a period of time as set forth in 2 Cal. Code Regs. Section 18401(b).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84310, Government Code.

#### HISTORY

New section filed 9-11-2007; operative 10-11-2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 37).

#### § 18450.1. Definitions. Advertisement Disclosure.

- (a) An advertisement as defined in Government Code section 84501 includes but is not limited to the following:
  - (1) Programming received by a television or radio;
- (2) A communication as described in subdivision (a) of Government Code section 84501 that is placed in a newspaper, periodical, or magazine of general circulation;

- (3) A telephone or facsimile message that is not solicited by the recipient and is intended for delivery in substantially similar form to 200 or more households;
- (4) A direct mailing that is not solicited by the recipient and is intended for delivery in substantially similar form to 200 or more households;
- (5) Posters, door hangers, and yard signs produced in quantities of 200 or more;
  - (6) A billboard;
- (7) Campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger produced in quantities of 200 or more.
- (b) In addition to the exempted communications in subdivision (b) of Government Code section 84501, the following are not an "advertisement":
- (1) A small promotional item (e.g., pen, pin, etc.) upon which the disclosures required by Government Code sections 84503, 84506 and 84507 cannot be conveniently printed or displayed, wearing apparel, and skywriting;
- (2) A communication from an organization to its members, other than a communication from a political party to its members;
  - (3) A web-based or Internet-based communication.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84501, 84502, 84503, 84504, 84505, 84506, 84507, 84508, 84509, 84510 and 84511, Government Code.

#### HISTORY

1. New section filed 7–31–2002; operative 7–31–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 31).

### § 18450.3. Committee Name Identification. Advertisement Disclosure.

- (a) The name identification requirements of Government Code section 84504 shall apply only to committees that are primarily formed to support or oppose a ballot measure, as defined by Government Code section 82047.5.
- (b) For purposes of implementing the name identification requirements of Government Code section 84504, the following shall apply to any committee primarily formed to support or oppose a ballot measure as defined by Government Code section 82047.5.
- (1) Identification of a disclosable contributor's "economic or other special interest" pursuant to Government Code section 84504 shall identify any ascertainable economic interest that exists that is likely to be affected by the ballot measure. If no ascertainable economic interest exists, the name or phrase pursuant to Government Code section 84504 shall identify any goal or purpose that is likely to be affected by the ballot measure. In the event that there is more than one disclosable contributor and all such disclosable contributors do not share an economic interest or goal

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or purpose, the name or phrase shall identify the various economic interests or goal or purpose that are likely to be affected by the ballot measure.

(c) If, pursuant to Government Code section 84504, candidates or their controlled committees, as a group or individually, are major contributors of \$50,000 or more, the committee name identification shall include the controlling candidates' names.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84504 and 84506, Government Code.

#### HISTORY

- 1. New section filed 1–24–2002 as an emergency; operative 1–24–2002 (Register 2002, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–24–2002 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 1–24–2002 order, including repealer of subsection (d), transmitted to OAL 5–15–2002 and filed 6–27–2002 (Register 2002, No. 26).
- 3. Editorial correction of HISTORY 2 and repealer of erroneous former HISTORY 3 (Register 2002, No. 45).

#### § 18450.4. Contents of Disclosure Statements. Advertisement Disclosure.

- (a) The disclosure requirements of Government Code sections 84503 and 84506, subdivision (a)(2), shall not apply to general purpose committees, as defined by Government Code section 82027.5.
- (b) Where a "disclosure statement" or "disclosure" is required for an advertisement under Government Code sections 84503, 84504, and 84506, the following shall apply to the committee that authorized and paid for the advertisement:
- (c) Disclosures required under Government Code sections 84503 and 84506 shall include the name, pursuant to 2 Cal. Code Regs. section 18450.3, of the \$50,000 contributor or contributors. The disclosure shall explicitly indicate that the contributor or contributors were major donors to the committee by stating, for example, "major funding by" or "paid for by." In the case of a contributor that is a committee pursuant to Government Code section 82013, subdivision (a), the word "committee" shall be included in the disclosure.
- (d) Where two or more contributors of identical amounts meet the threshold for the top two contributors, the order of disclosure shall be made beginning with the most recent contributor of that amount.
- (e) The disclosures required by Government Code sections 84503, 84504 and 84506 shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of the person(s) or committee(s) that paid for the communication, as specified below.
- (1) Video: The information shall be both written and spoken either at the beginning or at the end of the communication, except that if the disclosure statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required. The written disclosure statement shall be of sufficient size to be readily legible to an average viewer and air for not less than four seconds.
- (2) Audio: The information shall be spoken in a clearly audible manner at the beginning or end of the communication and shall last at least three seconds.
- (3) Print Media: All disclosure statements on printed materials designed to be distributed personally or through the mail shall be printed in type no less than 10 points in size and printed in a contrasting color to the background on which it appears.
- (4) Over Size Print Media: All disclosure statements on printed materials that are larger than those designed to be individually distributed (e.g., billboards) shall constitute at least five percent (5%) of the height of the advertisement and printed in a contrasting color.
- (5) If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.

(6) Each communication that would require a disclosure if distributed separately, and that is included in a package of materials, must contain the required disclosure.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84503, 84504 and 84506, Government Code.

#### HISTORY

- 1. New section filed 1–24–2002 as an emergency; operative 1–24–2002 (Register 2002, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–24–2002 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 1–24–2002 order, including amendment of subsections (a) and (b)(1)–(3), transmitted to OAL 5–15–2002 and filed 6–27–2002 (Register 2002, No. 26).
- Editorial correction of HISTORY 2 and repealer of erroneous former HISTORY 3 (Register 2002, No. 45).
- 4. New subsection (b) and subsection relettering filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).
- New subsection (a), subsection relettering and amendment of newly designated subsections (d) and (e) filed 10–11–2005; operative 10–11–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 41).

### § 18450.5. Amended Advertising Disclosure.

- (a) Advertisement Amendments: Advertisement disclosures must be amended when a new person qualifies as a disclosable contributor under Government Code sections 84503 or 84506, or when the committee's name changes pursuant to Government Code section 84504 and 2 Cal. Code Regs. section 18402 or section 18450.3.
  - (b) Timing of Advertisement Amendments:
- (1) Broadcast advertisement disclosures must be amended within 5 calendar days after a new person qualifies as a disclosable contributor or a committee's name changes. A committee shall be deemed to have complied with this section if the amended advertisement is mailed, containing a request that the advertisement immediately be replaced, to all affected broadcast stations by overnight mail no later than the fifth day.
- (2) Print media advertisement disclosures, including billboards, must be amended to reflect accurate disclosure information every time an order to reproduce the advertisement is placed.
- (3) Tangible items disclosure statements must be amended to reflect accurate disclosure information every time an order to reproduce the items is placed.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84503, 84504, 84506 and 84509, Government Code.

#### HISTORY

- New section filed 1-24-2002 as an emergency; operative 1-24-2002 (Register 2002, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-24-2002 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 1-24-2002 order transmitted to OAL 5-15-2002 and filed 6-27-2002 (Register 2002, No. 26).
- Editorial correction of HISTORY 2 and repealer of erroneous former HISTORY 3 (Register 2002, No. 45).

#### § 18450.11. Spokesperson Disclosure.

- (a) A report shall be filed, pursuant to Government Code section 84511, whenever a committee makes expenditures that total in the aggregate \$5000 or more to an individual for his or her appearance in an advertisement. For purposes of the report filed pursuant to this subdivision, "expenditure" shall have the meaning set forth in Government Code section 82025.
  - (b) The report filed must contain the following information:
- (1) The committee's name, street address and committee identificaion number:
- (2) The name, ballot number or letter and jurisdiction of the measure;
- (3) The date of the expenditure;
- (4) The name and address of the individual who appears in the advertisement; and
  - (5) The total amount of the expenditure.
- (c) Any committee subject to the electronic reporting requirements of subdivision (a) of Government Code section 84605 shall file this report electronically.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82025, 84501, 84511 and 84605, Government Code.

#### HISTORY

1. New section filed 2-19-2002; operative 3-21-2002 (Register 2002, No. 8).

### § 18451. CalPERS Board Member Elections—Campaign Statements.

Definitions. For purposes of Government Code section 84225 and 2 Cal. Code Regs. section 18452 only, the following definitions apply.

- (a) "Board" means the Board of Administration of the Public Employees' Retirement System as established under Article 1 (commencing with Section 20090) of Chapter 2 of Part 3 of Division 5 of Title 2 of the Government Code.
- (b) "Campaign statement" means an itemized report filed pursuant to Government Code section 84225 that is prepared on a form prescribed by the Commission and that provides the information specified in 2 Cal. Code Regs. section 18452. Campaign statements are not governed by the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9 of the Government Code.
- (c) "Candidate" means an individual who qualifies for or accepts nomination pursuant to 2 Cal. Code Regs. section 554.3 for an election conducted under Government Code section 20096 or Government Code section 20095, including incumbents running for reelection.
- (d) "Executive Officer" means the Chief Executive Officer of the Board.
- (e) "Election year" means the calendar year in which an election is conducted under Government Code section 20096 or Government Code section 20095.
- (f) "Ballot period" means the period beginning on the date of the mailing of the ballots to eligible active members in connection with an election held pursuant to Government Code section 20096 or Government Code section 20095 and ending on the date set as the deadline for the ballots to be returned.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84225, Government Code.

#### HISTORY

- 1. New section filed 11–12–99; operative 11–12–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 46).
- Change without regulatory effect redesignating second subsection (c) as subsection (d) and relettering subsections filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
- 3. Amendment of first paragraph and subsections (b)–(c) and (e)–(f) filed 9–12–2002 as a change without regulatory effect. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 37).

#### § 18452. Reporting Requirements.

- (a) The definitions of 2 Cal. Code Regs. section 18451 apply to this regulation.
- (b) Candidates for Board seats described in subdivision (g) of Government Code section 20090 are required to file campaign statements under Government Code section 84225.
- (1) Except as provided in subdivision (b)(3) of this regulation, candidates running for election in any election year shall file a pre–election and a post–election campaign statement. The pre–election statement shall be filed no later than two days before the first day of the ballot period. The statement shall cover the period beginning January 1 of the election year and ending five days before the beginning of the ballot period. The post–election statement shall be filed no later than January 10 of the calendar year following the election year; it shall cover the period the day after the closing date of the pre–election statement and ending December 31 of the election year.
- (2) In the case of a runoff election, in addition to the pre-election statement specified in subdivision (b)(1) of this regulation, each candidate participating in the runoff election shall file a pre-runoff election statement no later than two days before the first day of the runoff ballot period. The statement shall cover the period beginning the day after the closing date of the pre-election statement specified in subdivision (b)(1) of this

regulation and ending five days before the beginning of the runoff ballot period. The post–election statement specified in subdivision (b)(1) of this regulation shall be filed no later than January 10 of the calendar year following the election year; it shall cover the period beginning the day after the closing date of the pre–runoff election statement and ending December 31 of the election year.

- (3) In the case of a special election held pursuant to Government Code section 20095, the period covered by the pre–election statement shall begin on the day after the vacancy for which the special election is being held occurs and shall end five days before the beginning of the ballot period. The statement shall be filed no later than two days before the first day of the ballot period. The period covered by the post–election statement shall cover the period beginning four days before the beginning of the ballot period and ending 30 days after the election results are certified pursuant to the requirements of Government Code section 20096. The post–election statement shall be filed no later than 40 days following certification of the election.
- (4) In the case of a runoff election held after a special election, in addition to the pre–election statement specified in subdivision (b)(3), each candidate participating in the runoff election shall file a pre–runoff election statement no later than two days before the first day of the runoff ballot period. The statement shall cover the period beginning the day after the closing date of the pre–election statement specified in subdivision (b)(3) of this regulation and ending five days before the beginning of the runoff ballot period. The post–election statement specified in subdivision (b)(3) of this regulation shall be filed no later than 40 days following certification of the election; it shall cover the period beginning the day after the closing date of the pre–runoff election statement and ending 30 days after certification of the election.
- (c) Every candidate shall file with the Secretary of State an original and a copy of any campaign statement required to be filed by subdivision (b) of this regulation and a copy with the Executive Officer who shall retain the copy as a public record.
  - (d) Each campaign statement shall contain the following information:
- (1) The total amount of contributions received during the period covered by the campaign statement.
- (2) The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of one hundred dollars (\$100) or more.
- (3) The total amount of contributions received by a candidate during the period covered by the campaign statement from persons who have given a cumulative amount of less than one hundred dollars (\$100).
- (4) If the cumulative amount of contributions received from any person is one hundred dollars (\$100) or more and a contribution has been received from that person during the period covered by the campaign statement, all of the following:
  - (A) His or her full name.
  - (B) His or her street address.
  - (C) His or her occupation.
- (D) The name of his or her employer, or if self-employed, the name of the business.
- (E) The date and amount received for each contribution received during the period covered by the campaign statement.
  - (F) The cumulative amount of contributions.
- (5) The full name, residential or business address, and telephone number of the filer.
- (6) The total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made.
- (7) The total amount of expenditures made by a candidate during the period covered by the campaign statement to persons who have received one hundred dollars (\$100) or more.
- (8) The total amount of expenditures made by a candidate during the period covered by the campaign statement to persons who have received less than one hundred dollars (\$100).

- (9) For each person to whom an expenditure of one hundred dollars (\$100) has been made during the period covered by the campaign statement, all of the following:
  - (A) His or her full name.
  - (B) His or her street address.
- (C) The date and amount of the expenditure during the period covered by the campaign statement.
- (D) A brief description of the consideration for which each expenditure was made.
- (e) Each campaign statement shall be signed and verified by the candidate.
- (f) A contribution need not be reported nor shall it be deemed accepted or received if it is not cashed, negotiated, or deposited and is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported.
- (1) Except for contributions received before January 1, 1999, any contribution received by a candidate before January 1 of an election year which has not previously been reported is deemed received on January 1 of the election year and is reportable pursuant to the requirements of subdivision (b)(1) of this regulation.
- (2) In the case of a special election, a contribution received prior to the time the vacancy occurs is deemed received on the day the vacancy occurs and is reportable on the first statement required to be filed under subdivision (b)(3) of this regulation.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84225, Government Code.

#### HISTORY

- 1. New section filed 11–12–99; operative 11–12–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 46). For prior history see Register 93, No. 6.
- 2. Amendment of subsections (a)–(b)(1), new subsections (b)(2) and (b)(4), subsection renumbering and amendment of newly designated subsection (b)(3) and subsection (f)(2) filed 7–18–2005; operative 8–17–2005 (Register 2005, No. 29).

### § 18453. CalPERS Board Member Elections — Record Keeping Requirements.

- (a) It shall be the duty of every candidate to maintain those documents and records as enumerated and identified in 2 Cal. Code Regs. §18401, subd. (a), but only to the extent necessary to comply with the provisions of the Government Code, Title 9, Chapter 4 (section 84225) and 2 Cal. Code Regs. §\$18451 and 18452.
- (b) The retention of original source documents shall be in accordance with 2 Cal. Code Regs. §18401, subd. (b).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 90001, Government Code.

#### HISTORY

 New section filed 12–21–2000. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2000, No. 51).

#### § 18457. Out-of-State Contributors. [Repealed]

NOTE: Authority cited: Sections 83112, 84513, Government Code. Reference: Section 84507(d), Government Code.

#### HISTORY

- 1. New section filed 10–11–90; operative 11–10–90 (Register 90, No. 45).
- 2. Change without regulatory effect repealing section filed 2–4–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 6).

### Chapter 4.6. Online Disclosure

### § 18465. Disclosure of Lobbying Entity Identification Numbers.

(a) Each person required pursuant to Government Code section 84605(d) to file lobbying reports or statements electronically or online shall include in those reports or statements the identification number, if any, assigned such person by the Secretary of State. The electronic or online report or statement also shall include the identification number, if

any, assigned to any lobbyist, lobbying firm, lobbyist employer, or lobbying coalition whose name must be disclosed on the report or statement pursuant to Chapter 6 (commencing with section 86100).

(b) The requirements of this section are not applicable to reports filed on paper.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84605, Government Code.

#### HISTORY

1. New chapter 4.6 (section 18465) and section filed 12–20–2000; operative 12–20–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 51).

#### § 18465.1. Verification of Online Filers.

Any filing made on behalf of a filer by a vendor or service provider authorized by the filer to make such filings is presumed filed under penalty of periory by the filer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84605, Government Code.

#### HISTORY

1. New section filed 5-26-2005; operative 6-25-2005 (Register 2005, No. 21).

### § 18466. State Ballot Measure Contributions and Expenditures; Online Reports.

- (a) When Reporting Applies. The disclosure requirements of Government Code Section 84204.5 apply to a committee formed pursuant to Government Code Section 82013(a) that has online filing obligations under Government Code Section 84605, when the committee does any of the following:
- (1) Makes contributions totaling five thousand dollars (\$5,000) or more to a committee primarily formed, as defined in Government Code Section 82047.5, to support or oppose the qualification or passage of a single state ballot measure.
- (2) Makes contributions totaling five thousand dollars (\$5,000) or more to a state general purpose committee, as defined in Government Code Section 82027.5, and either:
- (A) The donor knows the contributions are to support or oppose the qualification or passage of a single state ballot measure; or
- (B) The receiving committee has reported contributions or expenditures exceeding \$100,000 in the past twelve months to support or oppose the qualification or passage of a single state ballot measure, the election for the measure has not yet been held, and the receiving committee's reports showing the more than \$100,000 in contributions or expenditures in the past twelve months are available online on the Secretary of State's database as of the applicable reporting deadline under Government Code Section 84204.5. However, if the donor knows the contributions are not to support or oppose the qualification or passage of a state ballot measure, no report is required under this paragraph (a)(2).
- (3) Makes independent expenditures totaling five thousand dollars (\$5,000) or more to support or oppose the qualification or passage of a single state ballot measure.
- (b) Reporting Threshold for Committees Supporting Multiple State Measures on the Same Ballot. When a committee makes contributions totaling five thousand dollars (\$5,000) or more to a committee supporting or opposing multiple state measures on the same ballot, and a report is required under paragraphs (a)(1) or (a)(2), the donor committee shall file a report, unless before the deadline for filing the report under Government Code Section 84204.5 the donor has received a written notice from the committee receiving the contribution stating how the money will be apportioned and demonstrating that five thousand dollars (\$5,000) or more will not be spent on a single state measure.
- (c) Exceptions. The disclosure required by Government Code Section 84204.5 does not apply in the following circumstances:
  - (1) As excepted by Government Code Section 84204.5(b) or (c).
- (2) When a committee primarily formed to support or oppose a state ballot measure makes a contribution to another committee primarily formed to support or oppose the same state ballot measure or another measure on the same ballot.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 84204.5, Government Code.

#### HISTORY

- New section filed 9–20–2007; operative 10–20–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law.
   Civil C010924. California Court of Appeal. Third Appellate District, nonpublished decision. April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007. No. 38).
- 2. Editorial correction of subsection (c)(1) (Register 2007, No. 48).

### Chapter 5. Campaign Finance Reform

#### § 18500. Contribution Limits. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85102, 85104 and 85301–85303, Government Code.

#### HISTORY

- New section filed 4–17–89 as an emergency; operative 4–17–89 (Register 89, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–15–89.
- 2. Repealed by operation of Government Code 11346.1(g) filed 1–15–91 (Register 91, No. 19).

#### § 18502. Broad Based Political Committee. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85102, Government Code.

#### HISTORY

- 1. New section filed 10–26–88 as an emergency; effective 10–26–88 and operative 1–1–89 pursuant to Government Code Section 85104 (Register 88, No. 46). A Certificate of Compliance must be transmitted to OAL within 120 days from 10–26–88 or emergency language will be repealed on 2–23–89. For history of former Chapter 5, see Registers 83, No. 5 and 81, No. 8.
- 2. Certificate of Compliance transmitted to OAL 1-25-89 and filed 2-24-89 (Register 89, No. 10).
- 3. Repealer filed 1–17–2001 as an emergency; operative 1–17–2001. A Certificate of Compliance must be transmitted to OAL by 5–17–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- 4. Certificate of Compliance as to 1–17–2001 order transmitted to OAL 3–30–2001 and filed 5–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 18).

### § 18502.1. Reporting by Small Contributor Committees. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84101, 84102, 84103, 85203 and 85402, Government Code.

#### HISTORY

- 1. New section filed 2-24-89; operative 2-24-89 (Register 89, No. 10).
- 2. Amendment of section heading, section and NOTE filed 1–7–97 as an emergency; operative 1–7–97. Submitted to OAL for printing only (Register 97, No. 2).
- 3. Editorial correction of HISTORY 2 (Register 97, No. 25)
- 4. Permanent regulation filed 6–19–97; operative 6–19–97. Submitted to OAL for printing only (Register 97, No. 25).
- Change without regulatory effect adding explanatory Note filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
- 6. Repealer filed 1–17–2001 as an emergency; operative 1–17–2001. A Certificate of Compliance must be transmitted to OAL by 5–17–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision. April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- Certificate of Compliance as to 1-17-2001 order transmitted to OAL 3-30-2001 and filed 5-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 18).

### § 18502.2. Early Registration as Broad Based Political Committee. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84101, 84102 and 85102, Government Code.

#### HISTORY

- 1. New section filed 11–2–88 as an emergency; operative 11–2–88 (Register 88, No. 46). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–2–89.
- 2. Repealed by operation of Government Code 11346.1(g) filed 1–15–91 (Register 91, No. 19).

#### § 18503. Small Contributor Committees.

- (a) A "small contributor committee" means any committee that meets all of the following requirements:
- (1) The committee has been in existence for at least six months. To meet this requirement, the committee may count the length of time it existed before January 1, 2001.
- (2) Within 36 months before making a contribution under Government Code section 85302, the committee receives contributions from 100 or more persons. To meet this requirement, the committee may count contributions received before January 1, 2001.
- (3) The committee's campaign funds do not include any contributions that exceed \$200 per person per calendar year, including campaign funds received before January 1, 2001.
- (4) The committee makes contributions to five or more candidates for any elective office every 36 months and each contribution equals or exceeds \$25. To meet this requirement, a committee may count contributions made before January 1, 2001.
- (b) Before making a contribution in excess of the limits specified in Government Code section 85301 and in accordance with the limits specified in Government Code section 85302, a small contributor committee shall amend its statement of organization to reflect that it is a small contributor committee and to indicate the date on which it qualified as such. For committees that qualified before January 1, 2001, the date of qualification is January 1, 2001.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84101, 84102, 84103, 85203, 85301 and 85302, Government Code.

#### HISTORY

- 1. New section filed 1–17–2001 as an emergency; operative 1–17–2001. A Certificate of Compliance must be transmitted to OAL by 5–17–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- 2. Certificate of Compliance as to 1–17–2001 order, including amendment of subsections (a)(3) and (a)(4), transmitted to OAL 3–30–2001 and filed 5–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 18).

### § 18519.4. Surplus Funds from Elections Prior to 1/1/97. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 89519, Government Code.

#### HISTORY

- New section filed 1-7-97 as an emergency; operative 1-7-97 (Register 97, No.
   A Certificate of Compliance must be transmitted to OAL by 5-7-97 or emergency language will be repealed by operation of law on the following day.
- Amendment of subsections (c) and (d) filed 5-13-97; operative 5-13-97. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 512795 (1991) (Register 97, No. 20).
- Change without regulatory effect adding explanatory Note filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29)
- 4. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

#### § 18520. Statement of Intention To Be a Candidate.

(a) For purposes of Government Code section 85200, "specific office" means a specific term of "elective office" as defined in Government Code section 82023.

- (b) Prior to the solicitation or receipt of any contribution or loan for a specific office, the individual must file a statement, signed under penalty of perjury, of intention to be a candidate for the specific office.
- (c) Candidates are not required to file a new statement of intention to be a candidate for the general election or special general election, after filing a statement of intention for the connected primary election or special primary election.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84101, 85200 and 85201, Government Code.

#### HISTORY

 New section filed 4–26–2002; operative 5–26–2002 (Register 2002, No. 17). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements).

### § 18521. Establishment of Separate Controlled Committee for Each Campaign Account.

- (a) A candidate who is required to file a statement of organization for a controlled committee pursuant to Government Code section 84101 shall establish a separate controlled committee and campaign bank account for each specific office identified in statements filed by the candidate pursuant to Government Code section 85200 and 2 Cal. Code Regs. section 18520.
- (b) Candidates, Other than Candidates for Elective State Office: A controlled committee and campaign bank account established for a specific office may be redesignated as a campaign bank account for a future election if:
  - (1) The future election is for the same elective office;
- (2) The funds in the campaign bank account/committee are not considered "surplus campaign funds" as defined in Government Code section 80510.
- (3) The candidate amends the Statement of Organization for the committee to reflect the redesignation for the future election;
- (4) The candidate files a new statement, signed under penalty of perjury, of intention to be a candidate for the specific future election; and
- (5) Redesignation of committees/bank accounts is not otherwise prohibited by law.
- (c) Redesignation by candidates for elective state office is prohibited at the state level.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84101, 85200, 85201, 85301, 85302 and 85318, Government Code.

#### HISTORY

- 1. New section filed 3-22-89; operative 4-21-89 (Register 89, No. 15).
- Amendment of section and Note filed 4–26–2002; operative 5–26–2002 (Register 2002, No. 17). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements).
- 3. New subsection (c) filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18522. Payments From Personal Funds for Filing Fee or Candidate Statement. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84200, 84221, 85200 and 85201, Government Code.

#### HISTORY

- 1. New section filed 3-22-89; operative 4-21-89 (Register 89, No. 15)
- Repealer filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).

#### § 18523. Nondesignated Contributions or Loans.

The following provisions shall apply to contributions that do not specifically designate the specific office for which the contributions were made:

(a) When a contributor makes a contribution or loan to a candidate with more than one controlled committee and does not designate the committee for which the contribution or loan is made, the candidate or his or her designee may allocate the contribution or loan to any one of the candidate's controlled committees consistent with subdivision (b) of this regulation, to the extent allowable under the applicable provisions of this title, including Government Code sections 85301 and 85302, and 2 Cal. Code Regs. section 18531.

- (b) The candidate or his or her designee may allocate a monetary contribution to a controlled committee consistent with subdivision (a) of this regulation, by either depositing the contribution in the campaign bank account for a particular controlled committee or reporting in a campaign statement or a late contribution report that the contribution has been made by that contributor to a particular controlled committee.
- (c) A monetary contribution shall be reported in the campaign statement for the reporting period in which it is received, and shall be deposited in the campaign bank account for the controlled committee to which it is being allocated within 30 days of receipt. Non-monetary contributions shall be allocated to a particular committee within 30 days of receipt or by the reporting deadline for the reporting period in which the contribution is received, whichever is earlier.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85201, 85301 and 85302, Government Code.

#### HISTORY

- 1. New section filed 2-24-89; operative 3-26-89 (Register 89, No. 10). 2. Amendment filed 7-28-89; operative 8-27-89 (Register 89, No. 31).
- 3. Editorial correction of printing error in HISTORY 1. (Register 91, No. 31).
- 4. Repealer of subsection (b) filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- 5. Change without regulatory effect amending NoTE filed 2–23–99 pursuant to section 100, title 1, Government Code (Register 99, No. 9).
- 6. Amendment of Note filed 5–4–2001; operative 6–3–2001 (Register 2001, No. 18).
- Amendment of section and Note filed 4–26–2002; operative 5–26–2002 (Register 2002, No. 17). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements).

#### § 18523.1. Written Solicitation for Contributions.

- (a) When a candidate or controlled committee of a candidate makes any written solicitation for contributions, the solicitation shall identify the particular controlled committee by name.
- (b) Candidates for elective state office: Candidates for elective state office must include all of the following information in any written solicitation for contributions:
- (1) Identification of the particular controlled committee for which the contribution is solicited by name;
- (2) Identification of the specific office for which the contributions are solicited.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85201, 85301 and 85302, Government Code.

#### HISTORY

- 1. New section filed 2-24-89; operative 3-26-89 (Register 89, No. 10).
- 2. Amendment filed 7-28-89; operative 8-27-89 (Register 89, No. 31).
- Amendment filed 5–26–98; operative 5–26–98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- Change without regulatory effect amending NoTE filed 2–23–99 pursuant to section 100, title 1, Government Code (Register 99, No. 9).
   Amendment of section and NoTE filed 5–4–2001; operative 6–3–2001 (Register
- 5. Amendment of section and NOTE filed 5–4–2001; operative 6–3–2001 (Register 2001, No. 18).
- 6. Amendment of section and NOTE filed 4–26–2002; operative 5–26–2002 (Register 2002, No. 17). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements).

### § 18524. Investment and Expenditure of Candidates' Campaign Funds.

(a) All contributions received by a candidate shall be deposited in the candidate's campaign bank account established pursuant to Government Code Section 85201. The candidate shall make all campaign expenditures from the campaign bank account. Moneys in the candidate's campaign bank account shall be spent only on expenses associated with the

candidate's election to the specific elective office designated in the statement of intention and expenses associated with holding that office.

- (b) The candidate may transfer funds from the campaign bank account to certificates of deposit, interest-bearing saving accounts, money market accounts, or similar accounts which shall be established only for funds for the same elective office for which the campaign bank account was established. Prior to expenditure, the funds shall be redeposited in the candidate's campaign bank account.
- (c) The candidate may establish one or more credit card accounts or one or more charge accounts for the campaign bank account. Expenditures for payment of charges incurred on each credit card or charge account shall be made only from the campaign bank account. The credit card and charge accounts shall be used only for expenses associated with the candidate's election to the specific elective office designated in the statement of intention or expenses associated with holding that office.
- (d) The candidate may establish, for the campaign bank account, one petty cash fund at each campaign office. No more than \$100 shall be deposited in a petty cash fund at any time. No expenditure of \$100 or more shall be made from a petty cash fund. Expenditures of less than \$100 from a petty cash fund shall be deemed to be expenditures from the campaign bank account. All expenditures from a petty cash fund shall be for expenses associated with the candidate's election to the specific elective office designated in the statement of intention or for expenses associated with holding that office.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85201, Government Code.

#### HISTORY

- 1. New Section filed 4-20-89; operative 5-20-89 (Register 89, No. 18).
- Change without regulatory effect amending NoTE filed 2–23–99 pursuant to section 100, title 1, Government Code (Register 99, No. 9).

### § 18525. Incumbent Candidates' Election Expenses and Officeholder Expenses.

- (a) An incumbent elected officer shall make expenditures for the following campaign expenses from the appropriate campaign bank account for election to a future term of office:
- (1) Payments for fundraising and campaign strategy expenses for election to a future term of office.
- (2) Payments for mass mailings, political advertising, opinion polls or surveys, and other communications in connection with election to a future term of office. For purposes of this section, a mass mailing, political advertisement, opinion poll or survey, or other communication shall be considered "in connection with election to a future term of office" if it makes reference to the officer's future election or status as a candidate for a future term of office, or if it is made by an incumbent officer within 3 months prior to an election for which he or she has filed any of the following:
- (A) A statement of intention to be a candidate for a specific office, pursuant to Government Code Section 85200.
- (B) A declaration of candidacy or nomination papers, as specified in Chapter 1 (commencing with Section 8000) of Division 8 of the Elections Code.
- (C) Any other documents necessary to be listed on the ballot as a candidate for any state or local office.
- (3) Payments for services and actual expenses of political consultants, the campaign treasurer and other campaign staff, pollsters and other persons providing services directly in connection with a future election.
  - (4) Payments for voter registration and get-out-the-vote drives.
- (b) An incumbent elected officer may make expenditures for purposes not enumerated in subdivision (a) from either the campaign bank account established pursuant to Government Code Section 85201 for election to the incumbent term of office or from a campaign bank account established pursuant to Government Code Section 85201 for election to a future term of office. This section shall not be construed to permit an incumbent elected officer to make expenditures from any campaign bank account for expenses other than those associated with his or her election to the specific office for which the account was established and expenses associated with holding that office.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85201, Government Code.

#### HISTORY

- 1. New section filed 11-15-89; operative 12-15-89 (Register 89, No. 46)
- 2. Amendment of subsection (a)(2)(B) and NOTE filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

#### § 18526. Reimbursement of Expenditures.

- (a) Expenditures made at the behest of the candidate for goods, services or travel expenses payable from the campaign bank account may be reimbursed and will be deemed expenditures from the campaign bank account if all the following apply:
- (1) The person to be reimbursed is a volunteer or paid employee of the candidate's controlled committee.
- (2) The treasurer of the committee is provided with a dated receipt and a written description of each expenditure prior to reimbursement.
- (3) Reimbursement is paid within 45 calendar days after the expenditures are paid by the person to be reimbursed.
- (b) Expenditures made at the behest of the candidate by an agent or independent contractor, such as a campaign consultant or advertising agent, for goods, services, or travel expenses payable from the campaign bank account may be reimbursed and will be deemed expenditures from the campaign bank account if all of the following apply:
- (1) The expenditures are made pursuant to a written contract between the candidate or committee and the agent or independent contractor which provides for the reimbursement of such expenditure.
- (2) The treasurer of the committee is provided with a dated receipt and a written description of each expenditure prior to reimbursement.
- (3) Reimbursement is paid within 45 calendar days after the expenditures are paid by the person to be reimbursed.
- (c) When a candidate or committee controlled by a candidate is notified that expenditures totaling \$100 or more in a filing period have been made by a person who is to be reimbursed, the candidate or committee shall report, pursuant to Government Code section 84211(k), the expenditures on the campaign statement for the period in which the expenditures were made by the person to be reimbursed and the reimbursements on the campaign statement for the period in which the expenditures were reimbursed.
- (d) If reimbursement is not paid within the time permitted by this section, the expenditure shall be reported on the campaign statement as a nonmonetary contribution received on the 45th day after the expenditures are paid by the person to be reimbursed, unless the person seeking reimbursement makes a good faith effort to obtain reimbursement and is unable to collect.
- (e) During the period specified for reimbursement, or until reimbursement is paid, whichever occurs first, the person to be reimbursed shall make no contributions to the candidate or committee which cause the total amount of expenditures and contributions made to the candidate or committee by that person to exceed contribution limits.

COMMENT: For reimbursement of officeholder expenditures, see Government Code section 89511.5.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82025, 84211 and 85201, Government Code.

#### **HISTORY**

- New section filed 4–18–89 as an emergency; operative 4–18–89 (Register 89, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–16–89.
   Certificate of Compliance as to 4–18–89 order including amendment of subsec-
- Certificate of Compliance as to 4–18–89 order including amendment of subsections (a)(1), (b)(1) and (d) transmitted to OAL 8–11–89 and filed 9–11–89 (Register 89, No. 37).
- 3. Amendment of subsection (c) filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- New comment filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- Change without regulatory effect amending subsection (c) filed 6–8–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 23).

## § 18526.1. Use of Personal Funds for Officeholder Expenditures. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84211, 85200, 85201, 89510 and 89511.5, Government Code.

#### HISTORY

- 1. New section filed 1-26-90; operative 2-25-90 (Register 90, No. 5).
- 2. Amendment of subsections (b)(3)–(d) filed 10–11–94; operative 10–11–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 41).

3. Editorial correction of Reference cite (Register 95, No. 21). 4. Repealer filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

#### § 18530. Use of Public Funds.

(a) Government Code section 85300 prohibits the payment of public moneys, in the form of matching funds or cash subsidies, for the public financing of elections. The prohibition in this subsection does not apply to public officers and candidates in charter cities and counties.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85300, Government Code.

#### HISTORY

- 1. New section filed 9-10-90; operative 10-10-90 (Register 90, No. 43).
- 2. Amendment filed 5-26-98; operative 5-26-98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 1991) (Register 98, No. 22)
- 3. Amendment of section heading and repealer and new section filed 12-15-98; operative 12-15-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 51).

#### Use of Funds Raised Prior to January 1, 1997. § 18530.1. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 49, California Political Reform Act of 1996.

#### HISTORY

1. New section filed 1-6-97 as an emergency; operative 1-6-97. Submitted to OAL for printing only (Register 97, No. 2).

Editorial correction of HISTORY 1 (Register 97, No. 25)

- 3. Section refiled as a permanent regulation 6-17-97; operative 6-17-97. Submitted to OAL for printing only (Register 97, No. 25).
- 4. Change without regulatory effect adding explanatory Note filed 7-18-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000,
- 5. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

#### § 18530.2. Transfer of Funds Raised Prior to Proposition 34 Limits.

(a) Candidates for Elective State Office Other Than Statewide Elective Office:

Pursuant to Government Code section 85306, subdivision (b), a candidate for elective state office, other than a candidate for statewide elective office, may transfer funds possessed on January 1, 2001, to a controlled committee of the same candidate for an election held after January 1, 2001, without attributing the funds to specific contributors. There is no limit to the number of times the candidate's committee may transfer without attribution funds possessed on January 1, 2001; provided, however, that the maximum amount that the controlled committee holding the funds on January 1, 2001, may subsequently transfer without attribution shall be the lesser of (i) the balance on January 1, 2001, less the amount of any transfers made without attribution after January 1, 2001, and (ii) the lowest balance in the committee's account on or after January 1, 2001; and, provided further, that the maximum amount that any committee that has received such unattributed transfer may subsequently transfer without attribution shall be the lesser of (i) the sum received without attribution less any transfers subsequently made by that committee without attribution, and (ii) the lowest balance in the committee's account following receipt of such unattributed transfer.

(b) Candidates for Statewide Elective Office:

Pursuant to Government Code section 85306, subdivision (c), a candidate for statewide elective office may transfer funds possessed on November 6, 2002, to a controlled committee of the same candidate for an election held after January 1, 2001, without attributing the funds to specific contributors. There is no limit to the number of times the candidate's committee may transfer without attribution funds possessed on November 6, 2002; provided, however, that the maximum amount that the controlled committee holding the funds on November 6, 2002, may subsequently transfer without attribution shall be the lesser of (i) the balance on November 6, 2002, less the amount of any transfers made without

attribution after November 6, 2002, and (ii) the lowest balance in the committee's account on or after November 6, 2002; and, provided further, that the maximum amount that any committee that has received such unattributed transfer may subsequently transfer without attribution shall be the lesser of (i) the sum received without attribution less any transfers subsequently made by that committee without attribution, and (ii) the lowest balance in the committee's account following receipt of such unattributed transfer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85306, Government Code.

#### HISTORY

- 1. New section filed 1-30-2003 as an emergency; operative 1-30-2003 (Register 2003, No. 5). A Certificate of Compliance must be transmitted to OAL by -30-2003 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 1-30-2003 order, including amendment of section and Note, transmitted to OAL 5-15-2003 and filed 6-16-2003 (Register 2003, No. 25).

#### § 18530.3. Reporting of Specified Contributions and **Expenditures by Political Party Committees.**

- (a) A political party committee as defined in Government Code section 85205 shall disclose on campaign reports filed pursuant to this title contributions to any accounts holding what are commonly known as "Federal Levin Funds" pursuant to title 2 U.S.C.A., section 441i(b), which are used to make "contributions" under Government Code section 82015, for the purpose of supporting or defeating any state or local candidate or ballot measure. The limitation set forth at Government Code section 85303(b) applies to all contributions made for the purpose of making contributions for the support or defeat of candidates for elective state office, including contributions to Levin Fund accounts.
- (b) A political party committee as defined in Government Code section 85205 shall disclose on campaign reports filed pursuant to this title expenditures made from any account established and maintained under provisions of the Federal Election Campaign Act of 1971, as amended, which are "expenditures" under Government Code section 82025, made for the purpose of supporting or defeating any state or local candidate or ballot measure.
- (c) A political party committee as defined in Government Code section 85205 shall disclose on the allocation schedule of its campaign reports, and on any other reports which the political party committee is required to file under this title, any expenditures by its federal committee which are "contributions" or "independent expenditures" made for the purpose of supporting or defeating any state or local candidate or ballot measure, as defined in Government Code sections 82015 and 82031. For each such contribution or independent expenditure the political party committee shall include a description of the account or accounts from which the contribution or expenditure is made, but shall not be required to allocate or itemize under Government Code section 84211(f), (g), or (h) any contributions received by its federal campaign committee used for the purposes described in this subdivision.
- (d) Any committee described in Government Code section 82013, including any major donor committee, shall disclose on its periodic campaign statements any contribution it has made to the Federal Levin Fund account of a political party committee as defined in Government Code section 85205.
- (e) A political party committee as defined in Government Code section 85205 shall provide notification of potential major donor committee filing obligations under Government Code section 84105 and 2 Cal. Code Regs. section 18427.1, to donors of contributions reported under subdivision (a) of this section.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025, 82031, 85303 and 85205, Government Code.

#### HISTORY

1. New section filed 1-9-2007; operative 2-8-2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 2).

### § 18530.4. Legal Defense Funds—State Candidates and Officers.

- (a) Application and Definitions.
- (1) This regulation applies to the bank account permitted by Section 85304(a).
  - (2) For purposes of this regulation, the following definitions apply:
  - (A) "Legal defense funds" means money in the legal defense account.
- (B) "Legal defense account" means the bank account established at a financial institution located in the State of California pursuant to Section 85304(a).
- (C) "Legal defense committee" means a committee formed pursuant to subdivision (b) of this regulation.
- (D) "Candidate" means a candidate for elective state office who raises legal defense funds.
- (E) "Officer" means an elected state officer who raises legal defense funds.
- (b) Establishing the Legal Defense Account and Controlled Committee. A candidate or officer shall deposit legal defense funds in and expend them from a bank account separate from any other bank account held by the official, including a legal defense account established under Section 85304.5. The candidate or officer shall establish a controlled committee for the legal defense account by filing a statement of organization pursuant to Section 84101. The statement of organization shall contain a description of the specific legal dispute or disputes for which the account is established, and shall be amended pursuant to Section 84103, as a legal dispute is either resolved or initiated. The words "Legal Defense Fund" and the candidate's or officer's last name shall be included in the committee name.
- (c) Required Recordkeeping and Audits. The candidate or officer, and the treasurer of the legal defense committee, is subject to recordkeeping requirements specified in Section 84104 and shall keep separate detailed accounts, records, bills, and receipts, for each legal dispute including documentation to support the basis and timing, as set forth in subdivision (g)(3), for raising legal defense funds. The legal defense committee shall be subject to audits under Chapter 10 (commencing with Section 90000) of Title 9 of the Government Code. An audit under Section 90001 of a candidate or officer, or any controlled committee of the candidate or officer, shall include that candidate's or officer's legal defense committee maintained during the audit period as described in Section 90002(c).
- (d) Reporting Requirements. The legal defense committee shall file campaign statements and reports pursuant to Chapters 4 (commencing with Section 84100) and 5 (commencing with Section 85100) of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the candidate or officer for election to state office.
- (e) Contributions and Expenditures not Subject to Certain Provisions. A contribution to and an expenditure from a legal defense account is not subject to the provisions of Sections 85200, 85201, or Article 4 (commencing with Section 85400) of Chapter 5 of Title 9 of the Government Code
- (f) Status as a Local Candidate or Local Elected Officer. A candidate or officer may establish a legal defense account under Section 85304 regardless of whether the individual is also a local candidate or local elected officer.
- (g) Limitations. For the purposes of Section 85304(a), the following limitations apply:
- (1) Legal defense funds may only be raised in an amount reasonably calculated to pay, and may only be expended for, attorney's fees and other related legal costs.
- (A) "Attorney's fees and other related legal costs" includes only the following:
- (i) Attorney's fees and other legal costs related to the defense of the candidate or officer.

- (ii) Administrative costs directly related to compliance with the requirements of subdivisions (b) and (d) and the recordkeeping requirements of subdivision (c) of this regulation.
- (B) "Attorney's fees and other related legal costs" does not include for example expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.
- (2) A candidate or officer may only raise funds under this regulation for defense against a civil or criminal proceeding, or for defense against a government agency's administrative enforcement proceeding arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. An administrative enforcement proceeding includes a discretionary audit initiated under Section 90003, but not an audit initiated under Section 90001 until the candidate or officer reasonably concludes that a government agency has commenced an investigation based upon the audit. A candidate or officer may raise funds under this regulation and Section 85304 to defend against an election contest conducted pursuant to Division 16 (commencing with Section 16000) of the Elections Code, but may not raise or spend legal defense funds for attorney's fees and other legal costs incurred in an election recount conducted pursuant to Chapter 9 (commencing with Section 15600) of Division 15 of the Elections Code.
- (3) Legal defense funds may not be raised in connection with a proceeding until the following has occurred:
- (A) In a proceeding brought by a government agency, when the candidate or officer reasonably concludes the agency has commenced an investigation or the agency formally commences the proceeding, whichever is earlier.
- (B) In a civil proceeding brought by a private person, after the person files the civil action.
- (h) Remaining Funds. Funds remaining in the legal defense account following payment of all attorney's fees and other related legal costs for which the account and committee are established shall be returned or disposed of as follows:
- (1) If the total amount of remaining legal defense funds is more than \$5,000, the entire sum shall be returned to legal defense account donors on a pro rata basis.
- (2) Remaining legal defense funds that are not required to be returned under subdivision (h)(1) shall be disposed of for any of the purposes set forth in subdivisions (b)(1) through (b)(5) of Section 89519. Remaining legal defense funds may not be transferred, except as permitted under subdivisions (b)(1) through (b)(5) of Section 89519, and disposition is subject to the provisions of Sections 85301 through 85306 and Regulation 18536.
- (i) Termination and Reopening of Committees. A legal defense account and legal defense committee shall be terminated, and all attorney's fees and other related costs as well as any remaining funds as described in subdivision (h) returned or disposed of, within 90 days of the date the last legal dispute for which the account and committee are established has been resolved. The Executive Director may for good cause, and consistent with the purposes of Section 85304 and this regulation, extend the termination date or permit the candidate or officer to reopen the account. The application to extend the termination date or to reopen the account shall be in writing and shall include copies of all supporting documents including copies of billing statements.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85301–85306 and 89519, Government Code.

HISTORY

1. New section filed 10-9-2001; operative 11-8-2001 (Register 2001, No. 41).

Amendment of section heading and section filed 12–13–2007; operative 1–12–2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 50).

#### § 18530.7. Extensions of Credit.

- (a) Except as provided in subdivision (b), an extension of credit which consists of a receipt of goods or services pursuant to an agreement between the provider of the goods or services and a candidate or committee, and where payment is not made until a later date, is a contribution subject to Government Code section 85307(a).
- (b) For purposes of Government Code section 85307(a), an extension of credit is not a contribution made by the provider of the goods or services or a contribution accepted by the candidate or committee if either subdivision (b)(1) or (b)(2) of this regulation is met:
  - (1) Payment is made on or before the earlier of the following dates:
  - (A) 45 days after the date of the invoice; or
  - (B) 45 days from the date the goods or services are delivered; or
- (C) For services ongoing in nature, 45 days after the date of the invoice, where services are billed no less frequently than on a three–month billing cycle.
- (2) All of the requirements of subsections (b)(2)(A)–(E) of this regulation are met:
  - (A) The credit arrangement is recorded in a written instrument;
- (B) It is a regular business of the provider of goods or services to provide similar goods or services;
- (C) The provider provides the goods and services in the ordinary course of business and on the same terms and conditions offered to customers generally;
- (D) The provider of goods or services enters into the agreement with the intent that the candidate or committee be required to pay in accordance with terms of the agreement and does not have actual knowledge that the candidate or committee would not be able to pay in accordance with those terms; and
- (E) The provider of goods or services makes reasonable efforts to collect the full amount of the payment owed within four months of the date that the payment for the goods or services is due under the terms of the agreement. Reasonable efforts to collect the full amount of the payment may be demonstrated even if:
  - (i) The provider does not exhaust all available legal options; or
- (ii) The provider accepts less than the full amount of the payment owed by the candidate or committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85307, Government Code.

#### HISTORY

1. New section filed 7–20–2005; operative 8–19–2005 (Register 2005, No. 29). For prior history, see Register 2001, No. 18.

#### § 18530.8. Personal Loans.

- (a) Any personal loan made before January 1, 2001, by a candidate for elective state office does not count toward the \$100,000 loan limit of subdivision (b) of Government Code section 85307.
- (b) For purposes of subdivision (b) of Government Code section 85307 and this regulation, "campaign" encompasses both the primary and general elections or special and special runoff elections for a specific term of elective state office. "Campaign" includes any of the candidate's controlled committees formed for the purpose of seeking that elective state office and all committees formed for the purpose of supporting the candidate's candidacy for that elective state office.
- (c) The proceeds of a loan that meets the terms of subdivision (a) of Government Code section 85307, which the candidate then lends to his or her campaign, count toward the \$100,000 loan limit of subdivision (b) of Government Code section 85307. Both the candidate and the commercial lending institution must be disclosed as the sources of the loan.
- (d) A candidate may make a series of personal loans to his or her campaign as long as the outstanding balance does not exceed \$100,000 at the

time of making the loans. If a candidate's personal loan balance has reached the \$100,000 limit, the loan balance must be reduced before the candidate may make any additional loans to his or her campaign.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85307, Government Code.

#### HISTORY

- 1. New section filed 2-19-2002; operative 3-21-2002 (Register 2002, No. 8).
- 2. Amendment of subsection (c) filed 11–9–2004; operative 11–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 46).

### § 18530.9. Contributions to Candidate Controlled Ballot Measure Committees. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82016, 82043, 85301 and 85302, Government Code.

#### HISTORY

- 1. New section filed 7-26-2004; operative 11-3-2004 (Register 2004, No. 31).
- 2. Repealer filed 9–20–2007; operative 10–20–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 38).

#### § 18531. Return of Excessive Contributions.

- (a) Contributions which either in the aggregate or on their face exceed the contribution limits of Government Code Sections 85301, 85302 and 85303 shall be deemed not to have been accepted within the meaning of that provision, if returned pursuant to this section.
- (b) A monetary contribution shall be returned prior to deposit or negotiation, within 14 days of receipt.
- (c) A non-monetary contribution shall be returned by returning to the contributor, within the deadline specified in subdivision (b) any of the following:
  - (1) The non-monetary contribution.
  - (2) Its monetary equivalent.
- (3) The monetary amount by which the value of the non-monetary contribution exceeds the contribution limits of Government Code Sections 85301, 85302 and 85303.
- (d) This regulation shall not be construed to authorize the making or solicitation of any contribution in excess of the contribution limits of Government Code Sections 85301, 85302 and 85303.
- (e) Notwithstanding subsections (a) through (c), contributions to a committee, other than a candidate controlled committee, which are earmarked for purposes other than making contributions directly to candidates for elective office shall not be deemed in excess of limits and need not be returned, provided the contributions are deposited to a separate account within the deadlines prescribed in subsection (b).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85301, 85302 and 85303, Government Code.

#### HISTORY

- 1. New section filed 6-23-89; operative 6-23-89 (Register 89, No. 26).
- 2. Amendment of subsections (a), (b) and (d) and footnote filed 11–16–90; operative 12–26–90 (Register 91, No. 1).
- 3. Amendment filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- 4. Amendment of subsections (a) and (a)(3)–(e), repealer of footnote and amendment of Note filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- Amendment of Note filed 5–26–98; operative 5–26–98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- 6. Amendment of section and NOTE filed 5–4–2001; operative 6–3–2001 (Register 2001, No. 18).
- 7. Editorial correction of subsection (b) (Register 2005, No. 38).

## § 18531.1. Affiliated Entities Sharing One Contribution Limit. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85311, Government Code.

#### HISTORY

1. New section filed 11–10–97; operative 11–10–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 46).

- Change without regulatory effect adding explanatory Note filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
- 3. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

#### § 18531.2. Refunding General Election Contributions.

- (a) The following provisions apply to the pro rata refund of contributions raised for a general election or a special general election by a candidate for elective state office who is defeated in the primary or special primary election, or who withdraws from the general election or special general election, as required under Section 85318:
- (1) The candidate shall apply Regulation 18540, subdivisions (a)(1) through (a)(7), to calculate expenses attributable to the general election or the special general election that may be deducted from the refunds.
- (2) The candidate shall convert to cash and include in the total contributions subject to refund each campaign asset, or the applicable portion thereof, if all of the following apply:
- (A) The asset was received as a non-monetary contribution for the general or special general election.
- (B) The candidate's committee held the asset on the day after the primary election, or the day after the candidate has withdrawn from the general election.
  - (C) The value of the asset was \$50 or more.
- (b) Contributions for the general election or special general election that may be considered surplus campaign funds under Section 89519 shall be refunded under Section 85318 and this regulation.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85318 and 89519, Government Code.

#### HISTORY

New section filed 12–13–2007; operative 1–12–2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 50).

## § 18531.3. Transfers of Funds Into Officeholder Accounts. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85313 and 89512, Government Code.

#### HISTORY

- 1. New section filed 1-6-97 as an emergency; operative 1-6-97. Submitted to OAL for printing only (Register 97, No. 2).
- 2. Editorial correction of HISTORY 1 (Register 97, No. 25).
- 3. Section refiled as a permanent regulation 6–17–97; operative 6–17–97. Submitted to OAL for printing only (Register 97, No. 25).
- Change without regulatory effect adding explanatory Note filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
- 5. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

#### § 18531.4. Officeholder Accounts—Reporting. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85200, 85201, 85301–85313, Government Code.

#### HISTORY

- 1. New section filed 1-7-97 as an emergency; operative 1-7-97. Submitted to OAL for printing only (Register 97, No. 2).
- 2. Editorial correction of HISTORY 1 (Register 97, No. 25).
- 3. Permanent regulation filed 6–19–97; operative 6–19–97. Submitted to OAL for printing only (Register 97, No. 25).
- Amendment of section and Note filed 5-26-98; operative 5-26-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 22).
- 5. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

#### § 18531.5. Recall Elections.

- (a) Definitions. For purposes of this section:
- (1) "Target officer" means an elected officer who is the subject of a recall effort.
- (2) "Replacement candidate" means a candidate within the meaning of Government Code section 82007 who is running to replace a target officer in the event the recall is successful and who is on the same ballot as the recall measure.

- (b) Application of Contribution and Voluntary Expenditure Limits to State Recalls.
- (1) Target Officer. Pursuant to Government Code section 85315, the contribution limits of Chapter 5 of the Act do not apply to contributions accepted by an elected state officer who is the target of a recall into a separate recall committee established to oppose the qualification of the recall measure or the recall election. Pursuant to Government Code section 85315, the voluntary expenditure limits of the Act do not apply to expenditures made by an elected state officer who is the target of a recall to oppose the qualification of the recall measure or the recall election.
- (2) Replacement Candidates. The replacement candidates in a state recall election are seeking elective state office and therefore the contribution and voluntary expenditure limits of Chapter 5 of the Act apply to replacement candidates.
- (3) Committees Primarily Formed to Support or Oppose a Recall. A recall is included within the definition of a "measure" in Government Code section 82043. Therefore, except as provided in this subdivision, the contribution and voluntary expenditure limits of Chapter 5 of the Act do not apply to a committee primarily formed to support or oppose a recall. As to candidate controlled recall committees, the provisions of 2 Cal. Code Regs. section 18530.9 apply.
- (c) Committee Formation and Campaign Report Filing Obligations. All candidates and committees that raise and spend funds in connection with a recall have full reporting and disclosure obligations under Chapters 4 and 5 of the Political Reform Act.
- (1) Target Officer. A target officer may use a committee for the office held to oppose the recall. A target officer may also establish a separate committee to oppose a recall upon receiving a notice of intent to recall the officer pursuant to Elections Code section 11021. A target officer must deposit contributions accepted in the separate committee to oppose the recall in a single bank account at a financial institution located in the State of California which is separate from any other bank account held by the officer, including any campaign bank account. The word "recall" and the name of the target officer shall be included as part of the committee name in the statement of organization filed for the committee pursuant to Government Code section 84107.

A target officer opposing a recall is not required to file a new statement of intention to be a candidate for elective office pursuant to Government Code section 85200.

- (2) Replacement Candidate. A replacement candidate may establish a committee to seek elective office in a recall election. A replacement candidate must disclose all contributions received and expenditures made pursuing elective office, even if the target officer has not yet been served with notice of intent to recall. A replacement candidate is required to file a statement of intention to be a candidate for elective office pursuant to Government Code section 85200.
- (3) Committees Primarily Formed to Support or Oppose a Recall (Including Recall Proponents and Opponents). A person or group of persons who raises or spends more than \$1,000 for a recall attempt qualifies as a "committee" under Government Code section 82013 when the target officer is served with a notice of intent to recall pursuant to Elections Code section 11021. Once the notice of intent to recall is given, the committee must report on its first campaign statement all contributions received and expenditures made for the purpose of influencing the electorate to sign a recall petition or to vote for or against a recall election, regardless of when the contributions were received or expenditures were made. A committee primarily formed to support or oppose the recall of an elected officer must identify in the committee name, the name of the elected officer and whether the committee is in support of or opposition to the recall
- (d) The amendments to this regulation adopted by the Commission on June 25, 2004, shall become effective November 3, 2004.

COMMENT: Committees active in a recall must file all campaign reports required by Chapters 4 and 5 of the Act. These reports include the following: the target officer, committees primarily formed to support or oppose a recall measure, and the replacement candidates must all file the semi-annual campaign reports and two pre-election reports preceding the recall election, required by Government

Code sections 84200 and 84200.5, 84200.7 or 84200.8. In addition, committees primarily formed to support or oppose a recall measure, including a separate committee established by a target officer to oppose a recall measure, must file quarterly campaign reports required by Government Code section 84202.3. For recalls of an elected state officer, the electronic reports required by Government Code section 85309 must be also filed.

In addition, pursuant to Government Code sections 81013 and 81009.5, nothing in the Act prevents a local jurisdiction from adopting a local ordinance with additional or different requirements applicable to candidates or committees involved in recall elections in that jurisdiction, including applying contribution limits to all candidates and committees participating in the recall, so long as the local ordinance does not prevent the persons from complying with the Political Reform Act.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82007, 82043, 84107, 84211, 85200, 85301, 85302 and 85315, Government Code.

HISTORY

- 1. New section filed 8–14–2003; operative 8–14–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 33). For prior history, see Register 2001, No. 18.
- 2. Amendment of subsections (b)(3) and (c)(1), new subsection (d) and amendment of Note filed 7-26-2004; operative 11-3-2004 (Register 2004, No. 31).

### § 18531.6. Treatment of Debts Outstanding After an Election — Prior to January 24, 2004.

The provisions of this regulation apply to contributions accepted by a committee prior to January 24, 2004. For rules regarding the treatment of contributions accepted on or after January 24, 2004, see regulation 18531.61.

- (a) Pre–2001 Elections. Government Code section 85316 does not apply to a candidate for elective state office in an election held prior to January 1, 2001.
- (1) There are no contribution limits in effect for elections held prior to January 1, 2001 for contributions made on or after January 1, 2001.
- (2) Contributions for an election held prior to January 1, 2001 may be accepted in an amount that exceeds net debts outstanding.
- (b) 2001 and Subsequent Elections. Government Code section 85316 applies to a candidate for elective state office in an election held on or after January 1, 2001, as follows:
- (1) The contribution limits of Government Code sections 85301 and 85302 apply to any candidate controlled committee formed on or after January 1, 2001, whether the committee is designated for an election held pre– or post–January 1, 2001.
- (2) Beginning January 1, 2001, contributions received by any candidate controlled committee formed prior to January 1, 2001, for an election held after January 1, 2001, are subject to the limits of Government Code sections 85301 and 85302.
- (3) Transfers to a committee formed for an election held on or after January 1, 2001, are subject to the requirements of 2 Cal. Code Regs. section 18536
- (c) A candidate for elective state office subject to subdivision (b) of this regulation may use contributions accepted pursuant to Government Code section 85316 only for payment of net debts outstanding for an election.
- (d) For purposes of this section, "net debts outstanding" includes the following:
- (1) An amount necessary to cover the cost of raising funds as permitted under this section;
- (2) Any costs associated with complying with the post-election requirements of this Title and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; and
- (3) The total amount of unpaid debts, loans and accrued expenditures incurred with respect to an election, less the sum of:
- (A) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value; and

(B) The total amounts owed to the candidate controlled committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.

The amount of the net debts outstanding shall be reduced as additional funds are received. The candidate and his or her controlled committee(s) may accept contributions made after the date of an election, if such contributions do not exceed the amount of net debts outstanding on the date the contribution is received. Any contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits.

(e) Notwithstanding subdivision (b), this regulation does not apply to a candidate for statewide elective office in an election held before November 6, 2002.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83 of Proposition 34; and Sections 85201, 85301–85302, 85306, 85316, 85317, 85318 and 85321, Government Code.

#### HISTORY

- 1. New section filed 10-4-2001; operative 11-3-2001 (Register 2001, No. 40).
- 2. Editorial correction of subsection (b)(2) (Register 2001, No. 48).
- 3. Amendment of section heading and new first paragraph filed 1–23–2004 as an emergency; operative 1–24–2004. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2004, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–24–2004 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 1-23-2004 order transmitted to OAL 4-16-2004 and filed 5-13-2004 (Register 2004, No. 20).

### § 18531.61. Treatment of Debts Outstanding After an Election.

- (a) Application. Under Section 85316(a) a candidate for elective state office may solicit and accept contributions after an election to pay net debts outstanding, subject to the applicable contribution limit for that election. This regulation applies to contributions accepted under Section 85316(a) on or after January 24, 2004, by a candidate for elective state office. See Regulation 18531.6 for rules regarding the treatment of similar contributions accepted before January 24, 2004.
- (b) Definitions. For purposes of Section 85316(a) and this regulation, the following definitions apply:
- (1) "The applicable contribution limit for that election" means the contribution limit, if any, as provided in Sections 85301 and 85302 applicable on the date of the election.
- (2) "That election" or "the election" means the election for which a candidate for elective state office is raising contributions to pay net debts outstanding.
  - (3) "Net debts outstanding" includes all of the following:
- (A) An amount necessary to cover the cost of raising funds as permitted under Section 85316(a) and this regulation.
- (B) Costs related to complying with the post-election requirements of Title 9 (commencing with Section 81000) of the Government Code and other necessary administrative costs related to winding down the campaign, including office space rental, staff salaries, and office supplies.
- (C) Legal fees and expenses incurred directly in connection with monitoring the count of absentee or provisional ballots for the election, or with a ballot recount conducted under Chapter 9 (commencing with Section 15600) of Division 15 of the Elections Code for the election.
- (D) The total amount of unpaid debts, loans and accrued expenditures incurred with respect to the election, less the sum of both of the following:
- (i) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value.
- (ii) The total amounts owed to the candidate controlled committee in the form of credits, refunds of deposits, returns, or receivables, or a com-

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mercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.

- (c) Raising Funds. A candidate for elective state office may accept contributions after the date of the election only up to the amount of net debts outstanding from the election. The contributions accepted are subject to the applicable contribution limit for that election. The candidate shall reduce the total amount of net debts outstanding as additional funds are received. The candidate and his or her controlled committee(s) may not accept a contribution under Section 85316(a) that exceeds the total amount of net debts outstanding on the date the contribution is received. A contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits
- (d) Paying the Debt. A candidate for elective state office may only use a contribution accepted after the election pursuant to Section 85316(a) for payment of net debts outstanding from the election. The candidate may only use the funds on hand and owed to the committee, described in clauses (b)(3)(D)(i) and (ii), for payment of net debts outstanding from the election. The candidate shall use available funds to pay net debts outstanding as soon as practicable.
- (e) Transfer. Pursuant to Section 85306, a candidate may transfer campaign funds from another of his or her controlled committees for the purpose of paying the net debts outstanding of his or her committee for elective state office under Section 85316(a). A transfer of this type made to a committee for an election to a statewide elective office held on or after November 6, 2002, or to any other elective state office held on or after January 1, 2001, is subject to the contribution limits of Sections 85301 and 85302 and attribution requirements of Regulation 18536.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83 of Proposition 34; and Sections 85201, 85301, 85302, 85306, 85316, 85317, 85318 and 85321, Government Code.

#### HISTORY

- 1. New section filed 1–23–2004 as an emergency; operative 1–24–2004. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2004, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–24–2004 or emergency language will be repealed by operation of law on the following day.
- 2. Certificate of Compliance as to 1-23-2004 order transmitted to OAL 4-16-2004 and filed 5-13-2004 (Register 2004, No. 20).
- Amendment of section heading and section filed 1-7-2008; operative 2-6-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal. Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 2).

#### § 18531.62. Elected State Officeholder Bank Accounts.

- (a) Application and Definitions. For purposes of Government Code Section 85316(b) and this regulation, the following definitions apply:
  - (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Government Code Section 85316(b).
  - (4) "Officeholder funds" means money in the officeholder account.

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- (b) Establishing the Officeholder Account: For purposes of Government Code Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.
- (c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:
- (1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Government Code Section 84101 if the officeholder receives \$1,000 or more in officeholder contributions in a calendar year.
- (2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.
- (3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.
- (4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Government Code Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Government Code Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Government Code Section 90002(c).
  - (d) Prohibitions:
- (1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).
- (2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in 2 Cal. Code of Regulations Section 18525(a).
- (3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).
  - (e) Contributions to the Officeholder Account:
- (1)(A) Required Notices: In addition to the requirements of 2 Cal. Code of Regulations Section 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."
- (B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.
- (2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Government Code Section 85316(b)(3) only under all of the following circumstances:
- (A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;
- (B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

- (3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.
- (4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:
- (A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Government Code Section 85316(b)(1).
- (B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Government Code Section 85316(b)(2).
  - (f) Contributions Over the Limits:
- (1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Government Code Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Government Code Section 85200.
- (2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Government Code Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.
  - (g) Terminating Officeholder Accounts and Committees.
- (1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.
- (2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.
- (3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).
- (4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:
  - (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax—exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the office-holder, a member of his or her immediate family, or his or her committee treasurer.
- (D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.
- (5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000–90007, Government Code.

#### HISTORY

 New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

### § 18531.63. Elected State Officeholder Contribution Cumulation [Repealed].

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85316, Government Code.

#### HISTORY

- 1. New section filed 1–19–2007 as an emergency; operative 1–19–2007. A Certificate of Compliance must be transmitted by OAL by 5–21–2007 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 3).
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 2007, No. 26).

### § 18531.64. Winding Down Elected State Officer Officeholder Committees [Repealed].

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85316, Government Code.

#### HISTORY

- 1. New section filed 1–19–2007 as an emergency; operative 1–19–2007. A Certificate of Compliance must be transmitted by OAL by 5–21–2007 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil Co10924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 3).
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 2007, No. 26).

#### § 18531.7. Payments for Communications—Section 85312.

- (a) Definitions. For purposes of Government Code section 85312 "payments for communications to members" are any payments made by an organization or its sponsored committee for the publication, dissemination or communication to the organization's members, employees, or shareholders, or to the families of the organization's members, employees or shareholders by newsletter, letter, flyer or the like of material, written or spoken, that supports or opposes a candidate or ballot measure. "Payments for communications to members" do not include any payments made by an organization for general public advertising such as broadcasting, billboards, and newspaper advertisements or for communications to persons who are not members, employees, or shareholders, or families of members, employees, or shareholders of the organization.
- (1) An "organization," other than a political party, means a sole proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, labor union and any other organization or group of persons acting in concert, including a committee as defined by Government Code section 82013, but excluding a candidate or individual.
- (2) "Member" means any person who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director or directors or an officer or officers or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution. "Member" also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under 26 U.S.C. 501, subdivision (c). Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

- (3) A person is not a "member" of an organization if the person is only on a mailing or contact list of the organization without meeting the definition provided in subdivision (a)(2) of this regulation.
- (4) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (5) "Family" means a member's, employee's, or shareholder's spouse, domestic partner as defined by Family Code section 297, dependent children, and parents who reside with the member, employee, or shareholder.
- (b) An organization meets the requirements of subdivisions (a)(1) and (a)(2) of this regulation where it is comprised of 25 or fewer individuals and the communication is directed only to those individuals and their families.
- (c) Calculation of Payments Subject to Government Code section 85312. "Payments for communications" includes the following:
- (1) Any payment made by an organization for costs directly attributable to the communication including but not limited to salaries, production, postage, space or time purchased, agency fees, printing and any additional administrative or overhead costs attributable to the communication
- (2) Any payment for costs directly attributable to a communication from an organization inadvertently delivered to persons other than members, employees, or shareholders or families of members, employees, or shareholders provided those costs do not exceed \$100 or 5% of the total cost of the communication to an organization's members, employees, or shareholders or families of members, employees, or shareholders, whichever is higher, notwithstanding subdivision (c)(1) above.
- (d) Notwithstanding any provision of this regulation, a payment for a communication to members, employees, shareholders or families of members, employees or shareholders of an organization for the purpose of supporting or opposing a candidate or ballot measure shall be regarded as a contribution or expenditure if it is paid for by a person other than the organization, its sponsored committee, or its members, employees or shareholders, or paid from funds received by the organization or its sponsored committee from a person other than the organization's members, employees or shareholders that are earmarked for the communication.
- (e) A payment that is made at the behest of a candidate or committee for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure is not a contribution to the candidate or committee at whose behest the communication was made.
- (f) If the organization is a committee organized under Government Code section 82013, subdivision (a), and therefore already subject to the reporting requirements of Chapter 4 of this title, the payment is reportable in accordance with the requirements of Government Code section 84211, subdivisions (b), (i), (j) and (k)(1), (2), (3), (4), and (6).
- (g) Provisions of Government Code section 85312 and this regulation apply to communications supporting or opposing a local candidate or local measure.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025, 85303, 85312 and 85703, Government Code.

#### HISTORY

1. New section filed 10–31–2002; operative 10–31–2002. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 44).

#### § 18531.10. Communications Identifying State Candidates.

- (a) Definitions. For purposes of Government Code section 85310:
- (1) A candidate is "clearly identified" if the communication states his or her name, makes unambiguous reference to his or her office or status as a candidate, or unambiguously describes him or her in any manner. A candidate also is "clearly identified" if the communication contains the voice or a visual depiction of the candidate. A candidate is not considered "clearly identified" if the candidate's name is required by the provisions

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of state or federal law to appear in the communication and the candidate is not singled out in the manner of display.

- (2) A communication "expressly advocate[s]" the election or defeat of a candidate as that term is defined in 2 Cal. Code Regs. section 18225, subdivision (b)(2).
- (3) A communication is "made at the behest" of a candidate as that term is defined in 2 Cal. Code Regs. section 18225.7.
- (b) The \$50,000 threshold contained in subdivision (a) of Government Code section 85310 is met when a person makes or promises to make a payment or payments totaling \$50,000.
- (c) Communications are subject to subdivision (a) of Government Code section 85310 if they occur within 45 days before an election for which the candidate identified is on the ballot.
- (d) The contribution limit referred to in subdivision (c) of Government Code section 85310 applies to all contributions received by a committee that makes or promises to make payments at the behest of a candidate for a communication described in subdivision (a) of Government Code section 85310, regardless of whether the contributions are used to fund the communication at issue. Once a committee receives a contribution or contributions in excess of the limit referenced in subdivision (c) of Government code section 85310, the committee may not make or promise to make a payment for a communication governed by that subdivision. Any contribution received by a committee that makes a communication described in subdivision (c) of Government Code section 85310 may not be attributed to a person other than the person making the contribution to that committee.
- (e) The contribution limits under this regulation are subject to periodic adjustment pursuant to Government Code section 83124.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85310, Government Code.

#### HISTORY

 New section filed 7-30-2004; operative 7-30-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 31).

### § 18532. Solicitation of Contributions in Excess of the Contribution Limits. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85301, 85302, 85303 and 85305, Government Code.

#### HISTORY

- 1. New section filed 10-19-89; operative 11-18-89 (Register 89, No. 42).
- Amendment filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- Amendment of section and repealer of footnote filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 4. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

#### § 18533. Contributions from Joint Checking Accounts.

(a) A contribution made from a checking account by a check bearing the printed name of more than one individual shall be attributed to the individual whose name is printed on the check and who signs the check, unless an accompanying document directs otherwise. The document shall indicate the amount to be attributed to each contributing individual and shall be signed by each contributing individual whose name is printed on the check. If each individual whose name is printed on the check, the contribution shall be attributed equally to each individual, unless an accompanying document signed by each individual directs otherwise.

If the name of the individual who signs the check is not printed on the check, an accompanying document, signed by the contributing individuals, shall state to whom the contribution is attributed.

- (b) For purposes of this regulation, each contributing individual is a "person" as defined in Government Code section 82047 and is subject to the contribution limitations set forth in Government Code sections 85301 and 85303.
- (c) If the individual who signs the check or accompanying document is acting as an intermediary for another contributor, this regulation shall not apply and Regulation 18432.5 shall apply instead.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85301 and 85303, Government Code.

#### HISTORY

- 1. New section filed 2-23-90; operative 3-25-90 (Register 90, No. 11).
- Amendment filed 4-26-95; operative 4-26-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- 3. Amendment of subsection (b) and repealer of footnote filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43)
- Amendment of section and NOTE filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

#### § 18534. Required Committee Bank Accounts.

- (a) This regulation is applicable to any committee pursuant to subdivision (a) of Government Code section 82013 that receives contributions subject to the limits of subdivision (a) or (b) of Government Code section 85303.
- (b) A committee described in subdivision (a) of this regulation must make all contributions to candidates for elective state office, and to other committees for the purpose of making contributions to candidates for elective state office, from a bank account maintained and designated as an "all purpose" committee account. Checks drawn on this account must include the words "all purpose" in the title of the account appearing on the checks. (For example, "XYZ's all purpose account.")
- (c) Contributions received by a committee described in subdivision (a) of this regulation, that exceed the aggregate limits prescribed in subdivisions (a) or (b) of Government Code section 85303, must be returned pursuant to 2 Cal. Code. Regs. section 18531, or deposited into a committee bank account designated as a "restricted use" account, or may be split between a committee's "all purpose" and "restricted use" accounts at the time of deposit, with the amount deposited into the "all purpose" account not to exceed the contributor's limit under subdivisions (a) or (b) of Government Code section 85303. Within fourteen (14) calendar days following receipt, a committee may transfer any portion of the original contribution from the committee's "restricted use" account to the "all purpose" account, provided that the total amount deposited into the "all purpose" account does not exceed the contributor's limit under subdivisions (a) or (b) of Government Code section 85303. For each contribution transferred under this subdivision, the committee shall maintain records sufficient to establish that the transfer was effected within fourteen (14) calendar days of receipt. Checks drawn on any "restricted use account" must include the words "restricted use" in the title of the account appearing on the checks. (For example, "XYZ's restricted use account.")
- (d) Except by means of the transfer described in subdivision (c) above, funds from a "restricted use" account may not be used to make contributions to candidates for elective state office, or to make contributions to other committees for the purpose of making contributions to candidates for elective state office.
- (e) A committee described in subdivision (a) of this regulation may transfer funds from its "all purpose" account to any other account. Any such transfers, however, need not be considered in determining whether any person contributing to the committee has or has not exceeded annual contribution limits for that person under subdivisions (a) or (b) of Government Code section 85303. Except as set forth in subdivision (c) above, a committee may not transfer funds to an "all purpose" account from any "restricted use" or other committee account.
- (f) A committee making a contribution to any other committee must notify the recipient whether the contribution is from the committee's "all purpose" or "restricted use" account, or from some other account. A check with the proper designation of the account on its face shall be presumed to be adequate notification of the nature of the funds to the recipient committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85303, Government Code.

#### HISTORY

 New section filed 1–9–2007; operative 2–8–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 2).

### § 18535. Restrictions on Contributions Between State Candidates.

- (a) Under Government Code section 85305, a candidate for elective state office, as defined in Government Code section 82024, and any committee(s) controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of \$3,000 per election. This amount is adjusted for inflation in January of every odd–numbered year, pursuant to Government Code section 83124 and implementing regulations, and is \$3,000 in 2002.
- (b) The \$3,000 limit of Government Code section 85305, as adjusted for inflation, applies to contributions made by officeholders or candidates for Governor, other statewide elective offices, the Legislature, and the Board of Administration of the Public Employees' Retirement System, and their committee(s), to other candidates for elective state office, subject to the provisions of subdivision (e).
- (c) The restrictions of Government Code section 85305 on contributions made by one candidate for elective state office to another apply to the aggregate total of contributions made from the personal funds or assets of the candidate and contributions made by all committees controlled by that candidate, as defined in Government Code section 82016 and 2 Cal. Code Regs. section 18217.
- (d) The restrictions of Government Code section 85305 on contributions made by one candidate for elective state office to another apply to all contributions made from, and all contributions made to, any committees controlled by a candidate for elective state office, including committees formed for a pre–2001 election.
- (e) Pursuant to Section 83 of Proposition 34, the restrictions of Government Code section 85305 are applicable to contributions made by legislative candidates and their controlled committees to any candidate for elective state office, on and after January 1, 2001, and are applicable to contributions made by candidates for statewide elective office, as defined in Government Code section 82053, and their controlled committees, to any candidate for elective office, on and after November 6, 2002. COMMENT: Accordingly, on and after January 1, 2001, a legislative candidate and his or her committee(s) may not contribute to another legislative or statewide candidate in excess of \$3,000 per election. On and after November 6, 2002, a statewide candidate and his or her committee(s) may not contribute to another legislative or statewide candidate in excess of \$3,000 per election. During the period after January 1, 2001, and before November 6, 2002, however, a statewide candidate and his or her committee(s) is not prohibited from contributing in excess of \$3,000 per election to another statewide candidate or to a legislative candidate, though a legislative candidate is prohibited from receiving contributions in excess of \$3,000 per election pursuant to Government Code section 85301. NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85305, Government Code.

#### HISTORY

- 1. New section filed 8–19–2002 as an emergency; operative 8–19–2002. A Certificate of Compliance must be transmitted to OAL by 12–17–2002 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2002, No. 34). For prior history, see Register 2001, No. 18.
- 2. Certificate of Compliance as to 8-19-2002 order transmitted to OAL 12-13-2002 and filed 1-8-2003 (Register 2003, No. 2).

#### § 18536. Transfer and Attribution of Contributions.

For purposes of Government Code section 85306:

- (a) A committee transferring funds must designate in its records at the time of its first transfer whether it elects the "first in, first out" or a "last in, first out" method of accounting for the current and future transfers. That designation is irrevocable.
- (1) "First in, first out" means that campaign funds being transferred are attributed to the transferring committee's contributors in chronological order beginning with the earliest of its contributors or, if there has been

- a prior transfer, beginning with the earliest contributor for which unattributed contributions remain.
- (2) "Last in, first out" means that campaign funds being transferred are attributed to the transferring committee's contributors in reverse chronological order beginning with the most recent of its contributors or, if there has been a prior transfer, beginning with the most recent contributor for which unattributed contributions remain.
- (3) Campaign funds shall be attributed to contributors in the lesser of the following amounts:
- (A) The actual amount of the original contribution from the person to whom the campaign funds are being attributed;
- (B) The applicable contribution limit under Government Code section 85301 or 85302; or
- (C) The amount of campaign funds the committee is seeking to transfer that has not yet been attributed.
- (b) Except as provided in subdivisions (b) and (c) of Government Code section 85306, campaign funds transferred, when aggregated with all other transfers attributable to, and contributions from, the same contributor, may not exceed the contribution limits applicable to the candidate at the time of the transfer. Campaign funds attributed to a contributor who is a candidate for elective state office at the time of the transfer, when aggregated with all other contributions from that contributor, may not exceed the amount provided in subdivision (a) of Government Code section 85301.
- (c) The committee transferring the funds shall maintain records that identify the specific contributors to whom any transferred contributions have been attributed. If the transferring committee no longer is required by Government Code section 84104 to maintain detailed records, the receiving committee shall maintain either:
- (1) Such records from the transferring committee as are sufficient, pursuant to paragraphs (1), (5) and (6) of subdivision (f) of Government Code section 84211, to confirm the identity of the original contributors to whom transfers are being attributed; or
- (2) Copies of the transferring committee's original verified and filed campaign reports that show the original contribution received from each contributor to whom a transferred contribution is attributed.
- (d) A committee receiving transferred funds must disclose on its campaign statements each attributed contribution of one hundred dollars (\$100) or more, providing the same information required by subdivision (f) and, if applicable, subdivision (m) of Government Code section 84211 as disclosed on the campaign statement on which the contribution was originally reported or as contained in the committee's records at the time of the transfer.
- (e) Transfers made prior to a primary election, when aggregated with all other transfers attributable to, and contributions from, the same contributor, may include amounts that could have been raised for the general election pursuant to Government Code section 85318, provided the receiving committee complies with the requirements of this section.
- (f) A candidate or committee that receives a contribution which, when aggregated with contributions attributed to the same contributor, would otherwise constitute a violation of Government Code section 85301 or 85302, shall not be in violation of either of those sections provided the contribution is returned pursuant to 2 Cal. Code Regs. sections 18531.
- (g) A contributor that makes a contribution which, when aggregated with contributions attributed to the same contributor, would otherwise be in violation of Government Code section 85301 or 85302, shall not be in violation of either of those sections unless the contributor was aware of the attribution at the time the contribution was made.
- (h) This regulation does not apply to a candidate for statewide elective office, or the candidate's controlled committee for that office, in an election held before November 6, 2002. This regulation applies on and after November 6, 2002, to a candidate for statewide elective office, and the candidate's controlled committee for that office, in an election held on or after November 6, 2002.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85200, 85305, 85306 and 85318, Government Code.

#### HISTORY

- New section filed 7-17-2001; operative 7-17-2001 (Register 2001, No. 29).
   A Certificate of Compliance must be transmitted to OAL by 11-14-2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements). For prior history see Register 93, No. 9.
- Repealer and new section filed 11-6-2001; operative 11-15-2001 (Register 2001, No. 45).

# § 18536.1. Establishment of Separate Bank Account for Contributions in Compliance with Contribution Limitations. [Repealed]

NOTE: Authority cited: Section 83112, Government Code; and Section 12400, Elections Code. Reference: Sections 85200, 85201 and 85301–85306, Government Code; and Section 12400, Elections Code.

#### HISTORY

- New section filed 9–26–88 as an emergency; operative 9–26–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–24–89.
- 2. Certificate of Compliance including amendment transmitted to OAL 12–21–88 and filed 1–19–89; operative 1–19–89 (Register 89, No. 4).
- Change without regulatory effect repealing section filed 2-24-93; operative 2-24-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 9).

# § 18536.2. Use of Campaign Funds for Any Lawful Purpose Other Than to Support or Oppose a Candidacy for Elective Office. [Repealed]

NOTE: Authority cited: Section 83112, Government Code; and Section 12400, Election Code. Reference: Section 85306, Government Code; and Sections 12400 and 12401, Elections Code.

#### HISTORY

- New section filed 9-26-88 as an emergency; operative 9-26-88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-24-89.
- 2. Certificate of Compliance including amendment transmitted to OAL 12–21–88 and filed 1–19–89; operative 1–19–89 (Register 89, No. 4).
- 3. Change without regulatory effect repealing section filed 2–24–93; operative 2–24–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 9).

### § 18537. Contribution Limits and Application to Repaid Loans.

- (a) This regulation is applicable to loans received or made that are subject to the contribution limits of chapter 5 of this title.
- (b) Forgiveness of a loan made to a candidate or committee shall not constitute an additional contribution from the lender for purposes of the contribution limitations.
- (c) Except as prohibited by Government Code section 85316, repayment of a loan in whole or in part shall enable the lender, guarantor, endorser, or cosigner to make additional contributions to the same candidate or committee provided that the additional contributions, when combined with the outstanding balance of any loan from that contributor, do not result in a violation of the contribution limits.
- (d) Each loan received shall be reported as a contribution on the campaign report for the reporting period in which it was received regardless of whether it has been retired, forgiven, or remains outstanding in whole or in part. A candidate or committee which has repaid a loan, in whole or in part, and has received an additional contribution from the lender, shall indicate on the campaign statement that the cumulative amount of the contributor's contribution has been reduced accordingly.

NOTE: Authority cited: Section 83112, Government Code. Reference Sections 84211 and 85301-85321, Government Code.

#### HISTORY

- 1. New section filed 7-13-90; operative 8-12-90 (Register 90, No. 34).
- Amendment filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- Amendment of subsection (a) and repealer of footnote filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 4. Editorial correction of subsection (b) (Register 2001, No. 18).

- 5. Amendment of subsection (a) and amendment of Note filed 5–4–2001; operative 6–3–2001 (Register 2001, No. 18).
- 6. Amendment of section and NoTE filed 6–20–2006; operative 7–20–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 25).

#### § 18537.1. Carry Over of Contributions.

- (a) For purposes of Government Code section 85317 and this regulation, "carry over" refers to the movement of campaign funds to the candidate's controlled committee established for a subsequent election to the same elective state office without attribution as required by Government Code section 85306(a).
- (b) Campaign funds are available to be "carried over" pursuant to Government Code section 85317 and this regulation only if all of the following apply:
- (1) The funds to be "carried over" are held in a campaign bank account/ campaign committee established for an election to elective state office occurring on or after January 1, 2001, or for candidates for statewide elective office, for an election occurring on or after November 6, 2002;
- (2) The campaign bank account/campaign committee that is holding the funds to be "carried over" was established for an election that has already been held; and
- (3) The funds to be "carried over" are not considered "surplus campaign funds" as defined in Government Code section 89519.
- (c) For the purposes of Government Code section 85317, "subsequent election for the same elective state office" refers to:
- (1) The election to the next term of office immediately following the election/term of office for which the funds were raised:
- (2) The general election, which is subsequent to and for the same term of office as the primary election for which the funds were raised; or
- (3) The special general election, which is subsequent to and for the same term of office as the special primary election for which the funds were raised
- (d) A candidate who establishes a campaign bank account for an election but does not file the necessary documents or otherwise fulfill the requirements of the Election Code to appear on the ballot in that election may not "carry over" campaign funds, but may transfer with attribution pursuant to Government Code section 85306 and consistent with Government Code section 85318.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84214, 85200, 85201, 85306, 85316, 85317 and 85318, Government Code.

#### HISTORY

- 1. New section filed 4–19–2002; operative 5–19–2002 (Register 2002, No. 16).
- 2. Amendment of subsection (c) and new subsections (c)(1)-(d) filed 5-8-2006; operative 6-7-2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 19).
- Amendment of subsection (d) and NOTE filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18538. Ballot Measure Committees; Expenditures as Contributions to Candidates. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85301, 85302, 85303 and 85305, Government Code.

#### HISTORY

- New section filed 9-20-90 as an emergency; operative 9-20-90 (Register 90, No. 44). A Certificate of Compliance must be transmitted to OAL by 1-18-91 or emergency language will be repealed by operation of law on the following day.
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 91, No. 46).

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#### § 18538.2. Political Endorsements. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015 and 85304, Government Code.

#### HISTORY

- 1. New section filed 9–17–90 as an emergency; operative 9–17–90 (Register 90, No. 43). A Certificate of Compliance must be transmitted to OAL by 1–15–91 or emergency language will be repealed by operation of law on the following day.
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 91, No. 46).

#### § 18539. Online Disclosure of Contributions.

Reports filed under Government Code section 85309 are not required to be filed on paper. A report filed online or electronically pursuant to this section must contain the following information:

- (a) The name and address of the filer and, if applicable, the filer's identification number issued by the Secretary of State.
  - (b) Date of the filing.
  - (c) Identification of amended information.
  - (d) The date the contribution was received.
- (e) The full name and address of the contributor and the contributor's identification code. If the contributor is an individual, his or her occupation and employer.
  - (f) The amount of the contribution.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85309, Government Code.

#### HISTORY

- 1. New section filed 6–25–2001 as an emergency; operative 6–25–2001. A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil Co10924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 26). For prior history, see Register 2001, No. 18.
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 46).
- 3. New section filed 1-16-2002; operative 2-15-2002 (Register 2002, No. 3).

### § 18539.2. Reporting Payments Pursuant to Government Code Section 85310.

- (a) Reports filed under Government Code section 85310 are not required to be filed on paper. A report filed online or electronically pursuant to this section must contain the following information:
- (1) The name and address of the person making a payment or a promise of payment totaling \$50,000 or more for a communication described in Government Code section 85310, subdivision (a);
- (2) If the person making a payment or a promise of payment is an individual, his or her occupation and employer:
  - (3) The amount(s) of the payment(s) or promise of payment;
- (4) If the person making a payment or a promise of payment is a committee under Government Code section 82013, subdivision (a), the identification number issued to the committee by the Secretary of State;
  - (5) The date(s) of the payment(s) or promise of payment;
- (6) The name(s) of and office(s) sought or held by the candidate(s) identified in the communication;
- (7) A description of the method of communication for which the payment of \$50,000 or more was made, such as television or radio broadcasts, print advertisements, or literature and mailings; and
  - (8) Identification of amended information.
- (b) The Secretary of State will provide a mechanism for the filer to acknowledge his or her execution of a written declaration verifying the online or electronically filed report in accordance with subdivision (e) of this regulation.
- (c) If the person making a payment or a promise of payment has received a payment or promise of payment totaling \$5,000 or more from any other person(s) for the purpose of making the communication, the report must also contain the following information:
- (1) The name and address of the person from whom a payment or promise of payment was received;

- (2) If the person making a payment or a promise of payment is an individual, his or her occupation and employer;
  - (3) The date(s) of the payment(s) or a promise of payment;
  - (4) The amount(s) of the payment(s) or promise of payment; and
- (5) If the person making a payment or a promise of payment is a committee under Government Code section 82013, subdivision (a), the identification number issued to the committee by the Secretary of State.
- (d) To meet the requirements for verification under this title, a report required to be filed under Government Code section 85310 must contain or be verified by a written electronic filing declaration signed and verified in accordance with Government Code section 81004.
  - (e) The original declaration must:
- (1) Include the statement, "I have used all reasonable diligence in preparing this report and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.";
- (2) Be signed, dated and verified on the same date the report is transmitted to the Secretary of State; and
- (3) Be retained in the filer's records for five years following the date that the campaign report to which it relates is filed. The declaration must be furnished to an enforcement or auditing agency upon request.
- (f) An electronically transmitted report will be considered complete and filed when the conditions in subdivision (e) of this regulation are met. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81004, 83112 and 85310, Government Code.

#### HISTORY

- 1. New section filed 6–25–2001 as an emergency; operative 6–25–2001. A Certificate of Compliance must be transmitted to OAL by 10–23–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 26).
- 2. Certificate of Compliance as to 6-25-2001 order transmitted to OAL 10-17-2001 and filed 11-16-2001 (Register 2001, No. 46).
- 3. New subsection (a)(7), subsection renumbering and amendment of newly designated subsection (a)(8) filed 10–9–2002; operative 10–9–2002. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 41).

#### § 18540. Voluntary Expenditure Ceilings.

- (a) For purposes of Government Code section 85400, campaign expenditures shall be allocated to primary, general, special, or runoff elections as follows:
- (1) Expenditures related to mailing or distribution of campaign literature, signs, buttons, bumper stickers and similar items, shall be allocated to the next election following the date(s) on which the expenditures were made or, if the election is held on the date when the expenditures were made, to the election held on that date.
- (2) Expenditures related to publications in broadcast, print or electronic media shall be allocated to the next election following the date(s) specified in the contract for broadcast, publication, or dissemination or, if the election is held on the date specified for publication, broadcast, or dissemination, to the election held on that date.
- (3) Expenditures related to telephone banks, including costs of design and operation, costs of installing or renting telephone lines and equipment, toll charges, personnel costs, rental of office space, and associated consultants' fees, shall be allocated to the next election following the date(s) on which the expenditures were made or, if the election is held on the date when the expenditures were made, to the election held on that date
- (4) Expenditures on professional services, including fees and costs of campaign consultants and pollsters, shall be allocated to the next election following the date(s) on which the expenditures were made or, if the election is held on the date when the expenditure was made, to the election held on that date. In the event that a contract for professional services allocates specific fees and costs to particular elections, the terms of the con-

tract will govern allocation of expenditures to each election. If a contract provides for a bonus payment should the candidate win a particular election, the bonus payment is an expense of the election whose result triggers the payment obligation.

- (5) Overhead expenditures, including expenditures related to the lease of office space, payments for utilities, rental or purchase of office equipment and furnishings, miscellaneous supplies, costs of internal copying and printing, monthly telephone charges, personnel costs, and candidate or staff travel expenses, shall be allocated to the next election following the date(s) on which the expenditures were made or, if the election is held on the date when the expenditures were made, to the election held on that date.
- (6) Expenditures related to campaign fundraising shall be allocated to the election for which the funds were raised. If fundraising expenditures cannot be assigned in this manner to a particular election, fundraising expenditures shall be allocated to the next election following the date(s) on which the expenditures were made or, if the election is held on the date when the expense was incurred, to the election held on that date. Fundraising expenditures for the payment of debts under Government Code section 85316 shall not be counted against the voluntary expenditure ceilings established under Government Code section 85400.
- (7) Unless there is a clear indication to the contrary, campaign expenditures not described in subdivisions (a)(1) through (a)(6) of this regulation shall be allocated to the next election following the date(s) on which the expenditures were made or, if the election is held on the date when the expenditure was made, to the election held on that date. Refunds of any expenditure on goods or services not provided to or used by the campaign shall be credited to the election for which the expenditure would otherwise have been allocated.
- (8) The candidate shall maintain records establishing that his or her allocation of campaign expenditures under Government Code section 85400 was consistent with the provisions of the Act and of this regulation.
- (b) The allocation of expenditures under this regulation shall be reported pursuant to subdivision (c) of 2 Cal. Code Regs. section 18421.4.
- (c) A non-monetary contribution is deemed to be a campaign expenditure made by the receiving committee on the date of receipt, which counts against the voluntary expenditure limits prescribed by Government Code section 85400, if an expenditure for equivalent goods or services would have been a campaign expenditure described in subdivision (a) of this regulation. For purposes of Government Code section 85400, the amount of the expenditure shall be the fair market value of the contribution on the date of receipt.
- (d) Expenditures not counted against the voluntary expenditure limits prescribed by Government Code section 85400 include, but are not limited to, contributions to other candidates or committees, costs associated with preparing and filing campaign finance reports required under the Act, candidate filing fees, and costs of ballot pamphlet statements.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 85400 and 85402, Government Code.

#### HISTORY

- 1. New section filed 11–26–2001; operative 12–26–2001 (Register 2001, No. 48). For prior history, see Register 92, No. 28.
- Amendment of subsection (b) filed 9-12-2002 as a change without regulatory effect. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 37).

## § 18541. Voluntary Expenditure Limits—Notification and Designation Requirements. [Repealed]

NOTE: Authority cited: Sections 83112, Government Code. Reference: Sections 85400 through 85404 and 85602, Government Code.

#### HISTORY

- 1. New section filed 1-6-97 as an emergency; operative 1-6-97. Submitted to OAL for printing only (Register 97, No. 2).
- 2. Editorial correction of HISTORY 1 (Register 97, No. 25).

- Section refiled as a permanent regulation 6-17-97, including amendments to subsections (d) and (e); operative 6-17-97. Submitted to OAL for printing only (Register 97, No. 25).
- Change without regulatory effect adding explanatory Note filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29)
- 5. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).

### § 18542. Notification of Personal Contributions in Excess of the Voluntary Expenditure Limits.

- (a) A candidate for elective state office, other than a candidate for the State Public Employees Retirement Board, who makes personal contributions to his or her own campaign which in the aggregate are in excess of the applicable voluntary expenditure limits set forth in Government Code section 85400, must disclose on an initial or amended statement of intention specified in section 85200, the date on which the candidate's personal contributions exceeded the expenditure limit if any candidate in that race has accepted the voluntary expenditure limits.
  - (b) Filing requirements:
- (1) The statement of intention shall be filed within 24 hours of making a personal contribution or contributions which exceeds the expenditure limits in Government Code section 85400;
- (2) The statement of intention shall be personally delivered or sent by guaranteed overnight delivery; and
- (3) The original statement of intention shall be sent to the Secretary of State, who will make the information publicly available.
- (c) Personal contributions to be counted toward the expenditure limit include transfers of personal funds from any other controlled committee of the candidate.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85200, 85400, 85401 and 85402, Government Code.

#### HISTOR'

- New section filed 6-19-2001; operative 6-19-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 25)
- 2. Editorial correction amending HISTORY 1 (Register 2001, No. 29).
- 3. Certificate of Compliance as to 6-19-2001 order transmitted to OAL 10-17-2001 and filed 10-29-2001 (Register 2001, No. 44).

#### § 18543. Lifting of Voluntary Expenditure Limits.

For purposes of Government Code section 85402, subdivision (a), all candidates for an elective state office who have accepted the voluntary expenditure limits are not bound by those limits if any candidate for the same office, whether in the primary (or special) or general (or special runoff) election, contributes personal funds to his or her own campaign in excess of the limits set forth in Government Code section 85400.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85400 and 85402, Government Code.

#### HISTORY

- New section filed 10–29–2001 as an emergency; operative 10–29–2001 (Register 2001, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–2002 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements).
- 2. Repealer and new section filed 2–19–2002; operative 2–26–2002 pursuant to Government Code section 11343.4. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2002, No. 8).

### § 18544. Campaign Contribution and Voluntary Expenditure COLA Formula.

- (a) For purposes of Government Code Section 83124, beginning the year 2002 the cost of living adjustment shall be calculated as follows.
- (1) The contribution limitations in Government Code Sections 85301, 85302 and 85303 shall be adjusted biennially by the Commission to reflect changes in the California Consumer Price Index (CPI). The adjust-

ments shall be made using the following formula: the contribution limit amount in effect January 1, 2001, multiplied by the annual CPI, divided by the base CPI from 2000, rounded to the nearest one hundred dollars (\$100). The resulting figure shall be the adjusted contribution limitation in effect for all state elections held until the next odd numbered year.

- (2) The voluntary expenditure ceilings in Government Code Section 85400 shall be adjusted biennially by the Commission to reflect changes in the California Consumer Price Index. The adjustment shall be made using the following formula: the voluntary expenditure ceiling amount in effect January 1, 2001, multiplied by the annual CPI, divided by the base CPI from 2000, rounded to the nearest one thousand dollars (\$1,000). The resulting figure shall be the adjusted voluntary expenditure limitation in effect for all state elections held until the next odd numbered year.
- (b) For purposes of Government Code Section 85316(b), beginning the year 2006 the cost of living adjustment shall be calculated as follows.
- (1) The contribution limitation shall be adjusted biennially by the Commission to reflect changes in the California Consumer Price Index (CPI). The adjustment shall be made using the following formula: the contribution limit amount in effect January 1, 2007, multiplied by the annual CPI, divided by the base CPI from 2006, rounded to the nearest one hundred dollars (\$100). The resulting figure shall be the adjusted contribution limitation in effect for all state officeholders until the next odd numbered year.
- (c) The adjustments shall be based upon the September forecast of U.S. Bureau of Labor Statistics California Consumer Price Index for All Urban Consumers for the calendar year immediately preceding the year in which the adjustment is to take effect.

 $\$3,000 \times 187.4 = \$3,216 (\$3,200 \text{ rounded to the nearest }\$100)$ 

174.8

<sup>ii</sup> For example, the annual average California CPI for All Urban Consumers for 2000 is 174.8. In 2002, the California CPI increased to 187.4. Therefore an adjusted expenditure ceiling beginning in 2003 that was \$400,000 would be calculated as follows:

 $\frac{$400,000 \times 187.4}{174.8}$  = \$428,833 (\$429,000 rounded to the nearest \$1,000)

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83124, 85301, 85302, 85303, 85316 and 85400, Government Code.

#### HISTORY

- 1. New section filed 10-4-2002; operative 10-4-2002. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 40).
- 2. New subsections (b)–(b)(1) and subsection relettering filed 1–19–2007 as an emergency; operative 1–19–2007. A Certificate of Compliance must be transmitted by OAL by 5–21–2007 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 3).
- Reinstatement of section as it existed prior to 1–19–2007 emergency amendment by operation of Government Code section 11346.1(f) (Register 2007, No. 26).
- 4. Amendment of section and Note filed 7–3–2007; operative 8–2–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27).

### § 18545. Contribution Limit and Voluntary Expenditure Ceiling Amounts.

(a) Campaign Contribution Limits

- (1) For purposes of Government Code Section 85301(a), the adjusted contribution limit in effect for candidates for the Senate or Assembly and candidates for elected seats to the Board of Administration of the Public Employees Retirement System, for an election occurring during the period January 1, 2007 through December 31, 2008 is \$3,600 per person.
- (2) For purposes of Government Code Section 85301(b), the adjusted contribution limit in effect for candidates for Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, Insurance Commissioner and Board of Equalization members for an election occurring during the period January 1, 2007 through December 31, 2008 is \$6,000 per person.
- (3) For purposes of Government Code Section 85301(c), the adjusted contribution limit in effect for candidates for Governor for an election occurring during the period January 1, 2007 through December 31, 2008 is \$24,100 per person.
- (4) For purposes of Government Code Section 85302(a), the adjusted contribution limit in effect for candidates for Senate or Assembly and candidates for elected seats to the Board of Administration of the Public Employees Retirement System, for an election occurring during the period January 1, 2007 through December 31, 2008 is \$7,200 per small contributor committee.
- (5) For purposes of Government Code Section 85302(b), the adjusted contribution limit in effect for candidates for Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, Insurance Commissioner and Board of Equalization members for an election occurring during the period January 1, 2007 through December 31, 2008 is \$12,100 per small contributor committee.
- (6) For purposes of Government Code Section 85302(c), the adjusted contribution limit in effect for candidates for Governor for an election occurring during the period January 1, 2007 through December 31, 2008 is \$24,100 per small contributor committee.
- (7) For purposes of Government Code Section 85303(a), the adjusted annual contribution limit to any committee, other than a political party committee, in effect for an election occurring during the period January 1, 2007 through December 31, 2008 is \$6,000 per person.
- (8) For purposes of Government Code Section 85303(b), the adjusted annual contribution limit to any political party committee in effect for an election occurring during the period January 1, 2007 through December 31, 2008 is \$30,200 per person.
  - (b) Voluntary Expenditure Ceilings
- (1) For purposes of Government Code Section 85400(a)(1), the adjusted voluntary expenditure ceiling in effect for Assembly candidates for an election occurring during the period January 1, 2007 through December 31, 2008 is \$483,000 in the primary or special primary election and \$845,000 in the general or special general election.
- (2) For purposes of Government Code Section 85400(a)(2), the adjusted voluntary expenditure ceiling in effect for Senate candidates for an election occurring during the period January 1, 2007 through December 31, 2008 is \$724,000 in the primary or special primary election and \$1,086,000 in the general or special general election.
- (3) For purposes of Government Code Section 85400(a)(3), the adjusted voluntary expenditure ceiling in effect for State Board of Equalization candidates for an election occurring during the period January 1, 2007 through December 31, 2008 is \$1,207,000 in the primary election and \$1,811,000 in the general election.
- (4) For purposes of Government Code Section 85400(a)(4), the adjusted voluntary expenditure ceiling in effect for a candidate for Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, and Insurance Commissioner for an election occurring during the period January 1, 2007 through December 31, 2008 is \$4,828,000 in the primary election and \$7,243,000 in the general election.
- (5) For purposes of Government Code Section 85400(a)(5), the adjusted voluntary expenditure ceiling in effect for a candidate for Governor for an election occurring during the period January 1, 2007 through

<sup>&</sup>lt;sup>i</sup> For example, the annual average California CPI for All Urban Consumers for 2000 is 174.8. In 2002, the California CPI increased to 187.4. Therefore an adjusted contribution limit beginning in 2003 that was \$3,000 would be calculated as follows:

December 31, 2008 is \$7,243,000 in the primary election and \$12,071,000 in the general election.

- (c) Officeholder Contribution Limits (per contributor per calendar year)
- (1) For purposes of Government Code Section 85316, the adjusted contribution limit in effect for officeholders in the Senate or Assembly for calendar year 2007 and 2008 is \$3,000 per person per calendar year.
- (2) For purposes of Government Code Section 85316, the adjusted contribution limit in effect for officeholders in statewide elected state offices (other than Governor) for calendar year 2007 and 2008 is \$5,000 per person per calendar year.
- (3) For purposes of Government Code Section 85316, the adjusted contribution limit in effect for the officeholder in the Governor's office for calendar year 2007 and 2008 is \$20,000 per person per calendar year.
  - (d) Officeholder Contribution Limits (aggregate)
- (1) For purposes of Government Code Section 85316, the adjusted aggregate officeholder contribution limit in effect for officeholders in the Senate or Assembly for calendar years 2007 and 2008 is \$50,000 per calendar year.
- (2) For purposes of Government Code Section 85316, the adjusted aggregate officeholder contribution limit in effect for officeholders in statewide elected state offices (other than Governor) for calendar years 2007 and 2008 is \$100,000 per calendar year.
- (3) For purposes of Government Code Section 85316, the adjusted aggregate officeholder contribution limit in effect for the officeholder in the Governor's office for calendar years 2007 and 2008 is \$200,000 per calendar year.
- (e) The contribution limit and the voluntary expenditure ceiling adjustments shall be made pursuant to 2 Cal. Code of Regulations Section 18544.
- (f) As of January 1, 2007, the contribution limit and voluntary expenditure ceiling adjustments of this regulation also will apply to elections held after December 31, 2008, until these limits are adjusted by the Commission for the next biennial period.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 83124, 85301, 85302, 85303, 85316 and 85400, Government Code.

#### HISTORY

- New section filed 1–16–2003; operative 1–1–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).
- Amendment filed 12–31–2004; operative 1–1–2005 pursuant to Government Code section 11343.4 (Register 2004, No. 53).
- 3. Amendment filed 12–18–2006; operative 1–1–2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).
- 4. Amendment of section and NoTE filed 7–3–2007; operative 8–2–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27).

#### § 18550. Online Disclosure of Independent Expenditures.

- (a) Reports filed under Government Code section 85500 are not required to be filed on paper. A report filed online or electronically pursuant to this section must contain the following information:
- (1) The name and address of the filer and, if applicable, the filer's identification number issued by the Secretary of State.
  - (2) Date of the filing.
  - (3) Identification of amended information.
  - (4) The date of each expenditure.
  - (5) A description of each expenditure.
  - (6) The amount of each expenditure.
- (7) If the expenditure was in connection to a candidate, the candidate's name, the office sought or held and, if applicable, district number. In

- addition, the report must identify whether the expenditure was made to support or oppose the candidate.
- (8) If the expenditure was made in connection with a ballot measure, the ballot measure's name, including its number or letter, and the jurisdiction. In addition, the report must identify whether the expenditure was made to support or oppose the ballot measure.
- (b) If the filer is a recipient committee formed pursuant to Government Code section 82013, the filer must disclose contributions of \$100 or more received after the closing date of the last campaign statement through the date of the independent expenditure. If no previous campaign statement has been filed, disclose such contributions received since January 1 of the current calendar year. Also include the following information:
- (1) The full name and address of each contributor and the contributor's identification code. If the contributor is an individual, his or her occupation and employer.
  - (2) The date and amount of the contribution.
  - (3) The interest rate if the contribution is a loan.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85500, Government Code.

#### HISTORY

- 1. New section filed 6-25-2001 as an emergency; operative 6-25-2001. A Certificate of Compliance must be transmitted to OAL by 10-23-2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 26). For prior history, see Register 2001, No. 18.
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 2001, No. 46)
- 3. New section filed 1–16–2002; operative 2–15–2002 (Register 2002, No. 3).

#### § 18550.1. Independent and Coordinated Expenditures.

- (a) For purposes of Government Code section 85500(b), an expenditure is not considered independent, and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made, if the expenditure funds a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate and is made under the following circumstances:
- (I) The expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, the candidate on whose behalf, or for whose benefit, the expenditure is made, or
- (2) The communication funded by the expenditure is created, produced or disseminated,
- (A) After the candidate has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication, or
- (B) After discussion between the creator, producer or distributor of a communication, or the person paying for that communication, and the candidate, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is agreement on any of these topics.

As used throughout this regulation, the term "candidate" includes a candidate controlled committee and the agent of the candidate or controlled committee, when the agent acts within the course and scope of his or her agency.

- (b) In addition to the rule provided in subdivision (a) of this regulation, there shall be a presumption that an expenditure funding a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate is not independent of the candidate on whose behalf, or for whose benefit, the expenditure is made, when
- (1) It is based on information about the candidate's campaign needs or plans provided to the expending person by the candidate, or
- (2) It is made by or through any agent of the candidate in the course of the agent's involvement in the current campaign, or
- (3) The person making the expenditure retains the services of a person who provides the candidate with professional services related to campaign or fundraising strategy for that same election, or

- (4) The communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.
- (c) Notwithstanding the foregoing, an expenditure shall not be considered a contribution to a candidate merely because:
- (1) The person making the expenditure interviews the candidate on issues affecting the person making the expenditure, or
- (2) The person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate, or
- (3) The person making the expenditure has previously made a contribution to the candidate, or
- (4) The person makes an expenditure in response to a general, nonspecific request for support by a candidate, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditure, or
- (5) The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditure, or
- (6) The person making the expenditure informs the candidate that the person has made an expenditure, provided that there is no other exchange of information, not otherwise available to the public, relating to details of the expenditure, or
- (7) The expenditure is made at the request or suggestion of the candidate for the benefit of another candidate or committee.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85500(b), Government Code.

#### HISTORY

1. New section filed 4–9–2003; operative 4–9–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 15).

#### § 18564. Notice Requirement for Independent Expenditures Exceeding \$10,000. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85604, Government Code.

#### HISTORY

- 1. New section filed 1-25-90; operative 2-24-90 (Register 90, No. 5).
- Repealer filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).

#### Article 1. Statewide Measures

### § 18570. Return of Contributions with Insufficient Donor Information.

- (a) The 60-day period within which a contribution must be returned pursuant to Government Code section 85700 commences on the first day the candidate or committee, or an agent of a candidate or committee, obtains possession or control of the contribution.
- (b) Pending receipt of the information required by Government Code section 85700, a candidate or committee, or an agent of a candidate or committee, may deposit a monetary contribution in the candidate's or committee's campaign bank account.
- (c) A contribution lacking the information required by Government Code section 85700 is deemed returned on the date the contribution or its monetary equivalent is mailed, delivered or otherwise transmitted to the contributor within 60 calendar days of the date identified according to subdivision (a) of this regulation. If the contribution cannot be returned, the contribution shall be paid within 60 calendar days of the date identified according to subdivision (a) of this regulation to the Secretary of State for deposit in the General Fund of the State. If the contribution was made in connection with a local election, the contribution shall be paid to the general fund of the local jurisdiction in which the committee is based.
- (d) A candidate or committee shall maintain in its files a record of the date on which the information required by Government Code section

85700 was obtained, if that date is different from the date the contribution is received.

- (e) Except as provided otherwise, campaign disclosure statements shall be amended within 70 calendar days of the closing date of the reporting period to include information required by Government Code section 85700 that is obtained after the original disclosure statement is filed. Campaign disclosure statements filed pursuant to Government Code sections 84203, 84204, 85309 and 85500 need not be amended pursuant to this regulation.
- (f) Contributions that are returned by check, pursuant to Government Code section 85700, which are not cashed by the original contributor within 90 calendar days of being returned, pursuant to subdivision (c) of this regulation, shall be paid within an additional 30 calendar days to the Secretary of State for deposit in the General Fund of the State. If the contribution was made in connection with a local election, the contribution shall be paid to the general fund of the local jurisdiction in which the committee is based.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84213 and 85700, Government Code.

#### HISTORY

- 1. New section filed 10–9–2001; operative 11–8–2001 (Register 2001, No. 41). For prior history, see Register 78, No. 5.
- Amendment of subsection (c) and new subsection (f) filed 7–20–2005; operative 8–19–2005 (Register 2005, No. 29).

### § 18572. Lobbyist Contributions—Making a Contribution

- (a) A lobbyist makes a contribution prohibited by Government Code section 85702 when any of the following occur:
- (1) he or she mails, delivers or otherwise transmits to an elected state officer, a candidate for elective state office or his or her controlled committee, or to a committee primarily formed to support or oppose such a candidate, that the lobbyist is registered to lobby, a contribution as defined in Government Code section 82015 and 2 Cal. Code Regs. section 18215, and the contribution is made from the lobbyist's personal funds or assets. A contribution will be deemed to be made from a lobbyist's personal funds or assets when the contribution is made from assets which are the personal property of the lobbyist, unless pursuant to 2 Cal. Code Regs. section 18533 the contribution is attributed to another person.
- (2) the contribution is made by a business entity, including a lobbying firm, owned in whole or in part by a lobbyist, and the lobbyist participates in the decision to make the contribution.
- (3) the contribution is made from funds of a committee comprised in part of personal funds or resources of a lobbyist and the lobbyist participates in the decision to make the contribution.
- (b) Nothing in this regulation shall be construed to prohibit a lobbyist from advising his or her client or lobbyist employer regarding the making of a contribution.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015 and 85702, Government Code.

#### HISTORY

- 1. New section filed 6-6-2002; operative 7-6-2002 (Register 2002, No. 23).
- 2. Editorial correction of subsection (a)(1) (Register 2004, No. 17).

### § 18573. Proposition 34 Provisions Applicable to Local Jurisdictions. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82016, 83116, 83116.5, 84204, 84305.6, 84511, 85100, 85202, 85206, 85308, 85312, 85501, 85700, 85701, 85703, 89510, 89519, 91000, 91004, 91005.5 and 91006, Government Code.

#### HISTORY

- 1. New section filed 1–22–2001 as an emergency; operative 1–22–2001. A Certificate of Compliance must be transmitted to OAL by 5–22–2001 or emergency language will be repealed by operation of law on the following day. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 4).
- Repealed by operation of Government Code section 11346.1(g) (Register 2003, No. 10).

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#### § 18580. Direct Personal Benefit Defined. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 85800, Government Code.

#### HISTORY

- 1. Repealer filed 4–14–76; effective thirtieth day thereafter (Register 76, No. 16).
- 2. New section filed 11–15–90; operative 12–15–90 (Register 90, No. 50).
  3. Renumbering and amendment of former section 18580 to section 18960 filed
- Renumbering and amendment of former section 18580 to section 18960 filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).

#### § 18585. Defining "Acting Jointly." [Repealed]

NOTE: Authority cited: Section 83112, Government Code.

#### HISTORY

- 1. Repealer filed 4–14–76; effective thirtieth day thereafter (Register 76, No. 16).
- Change without regulatory effect adding Note filed 8–31–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

#### § 18586. Statements of Intent. [Repealed]

NOTE: Authority cited: Section 83112, Government Code.

#### HISTORY

- 1. Repealer filed 4-14-76; effective thirtieth day thereafter (Register 76, No. 16).
- 2. Change without regulatory effect adding NoTE filed 8–31–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

## § 18587. Procedure for Reviewing Statements of Intent (85300–85305). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85300–85305, Government Code.

#### HISTORY

- 1. New section filed 9-30-75 as an emergency; effective upon filing (Register 75, No. 40).
- 2. Certificate of Compliance filed 1-23-76 (Register 76, No. 4).
- 3. Repealer filed 4-14-76; effective thirtieth day thereafter (Register 76, No. 16).

#### § 18588. Statements of Intent: Combined Filings; Separations After a Combined Filing. (85300–85305). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 85300–85305, Government Code.

#### HISTORY

- 1. New section filed 10–9–75 as an emergency; effective upon filing (Register 75, No. 41).
- 2. Certificate of Compliance filed 1-23-76 (Register 76, No. 4).
- 3. Repealer filed 4-14-76; effective thirtieth day thereafter (Register 76, No. 16).

#### § 18590. Formula for Authorization to Spend. [Repealed]

NOTE: Authority cited: Section 83112, Government Code.

#### **HISTORY**

- 1. Repealer filed 4-14-76; effective thirtieth day thereafter (Register 76, No. 16).
- Change without regulatory effect adding NoTE filed 8-31-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

### Chapter 6. Lobbyists

### § 18600. Duties and Prohibitions of Lobbyists, Lobbying Firms, and Lobbyist Employers (86100–86300).

When any duty or prohibition is imposed upon a lobbyist, lobbying firm or a lobbyist employer by Chapter 6 of the Political Reform Act, that duty or prohibition shall begin as of the day the lobbyist, lobbying firm or lobbyist employer contracts or is employed to influence or attempts to influence the action of any agency which will or should be but has not heretofore been listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86100–86203, Government Code.

(Chapter 6, Sections 18600, 18618 and 18650, filed as an emergency 6–30–75, operative 6–30–75; Certificate of Compliance included; Register 75, No. 27).

HISTORY

1. Amendment of subsections (a)–(c) filed as an emergency 5–28–86, making the following changes:

Subsection (a): deleted designation "(a)," "employer of a" after "upon a lobbyist', and "extend to all state candidates, committees supporting state candidates, elective state officials, legislative officials (and to the related individuals or entities specified in the Act) and to such agency officials (and related individuals or entities) of those agencies which are, or should be listed on the lobbyist's registration statement under Government Code Section 86101(c) or 86103. These duties and prohibitions" after "prohibition shall," "a" after "of the day," and "his" after "registration statement"; added "lobbying firm" after "upon a lobbyist," "employer" before "by Chapter 6," "the" after "as of the day," "lobbying firm or lobbyist employer" before "contracts" and "of the lobbying firm or the lobbyist employer of the lobbyist" after "registration statement";

Subsection (b): deleted "(b) When any duty or prohibition is imposed by Chapter 6 of the Political Reform Act upon a person described in Government Code Section 86108(b) that duty or prohibition shall extend to all state candidates, elective state officials, legislative officials (and to the related individuals or entities specified in the Act) and to such agency officials (and related individuals or entities) of those agencies whose administrative actions the person described in 86108(b) has attempted or is attempting to influence.":

Subsection (c): deleted "(c) This regulation does not apply to the duties and prohibitions imposed by Government Code Section 86205.

COMMENT: Lobbyists, employers of lobbyists and others who spend substantial amounts to influence legislative or administrative action are required to disclose certain dealings and transactions with state candidates, elected state officers, legislative officials, and agency officials, and with other individuals and entities by reason of relationships with any of the foregoing. Lobbyists are prohibited from making certain gifts and any campaign contributions to such persons. Few if any lobbyists attempt to influence administrative actions of all state agencies, and few if any persons make expenditures to influence administrative action of all state agencies. The purpose of the prohibitions and disclosure requirements as applied to agency officials is to assure that no undue economic influences will be brought to bear on such officials when they undertake administrative actions. This purpose would not be furthered if the prohibitions and disclosure requirements were interpreted as being applicable to all agency officials, without regard to whether the lobbyist or the filer had attempted to influence administrative actions of the official's agency.

To require disclosure regarding all agency officials without regard to whether the filer has attempted to influence administrative actions of the agency would tend to defeat the purpose of disclosure because the relevant data would be lost within a massive quantity of irrelevant data. These regulations carry out the purpose of the Act by limiting the disclosure requirements and prohibitions to officials of agencies the administrative actions of which the lobbyist or filer has attempted to influence.

Similar limitations cannot, however, be extended to the duties and prohibitions of the Act with respect to state candidates, committees supporting state candidates, elected state officers and legislative officials. To the contrary, the duties and prohibitions imposed upon lobbyists, employers of lobbyists, and persons described in Section 86108(b) with respect to such political persons must be applicable in all cases if the purposes of the Act are to be accomplished.

The influence of legislative officials and elected state officers extends throughout state government, there being no precise limits of their jurisdiction. Administrative agency officials know that members of the Legislature and the constitutional officers chosen directly by the people play a role in (1) defining the agency's powers; (2) adopting legislation bearing on the work of the agency; (3) determining the budget of the agency; (4) making or confirming appointments to the agency; and (5) considering future appointments to other governmental posts for the incumbent agency officials. In addition to these factors is the prestige of these elected officials which may give their communications with and urgings upon administrative agency officials special weight. Because of this extensive influence, the purposes of the Political Reform Act necessitate that the disclosure requirements and the prohibitions on gifts and contributions be applicable to all elected state officers and candidates for such offices and to all legislative officials, even in the case of a lobbyist who confines his activities to one or more administrative agencies.":

Certificate of Compliance must be transmitted no later than 9–25–86, or emergency language will be repealed by operation of law (Gov. C. § 11346.1(g)); (Register 86, No. 22).

2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).

### § 18601. Withdrawal of Lobbyist Certification or Lobbying Firm Registration.

- (a) Any person who has filed a lobbyist certification or lobbying firm registration statement pursuant to Government Code Section 86100 but who is not and has not been, since filing the certification or lobbyist registration statement, a lobbying firm, as defined in Government Code Section 82038.5 and 2 Cal. Adm. Code Section 18238.5, or a lobbyist, as defined in Government Code Section 82039 and 2 Cal. Adm. Code Section 18239, may withdraw the certification as a lobbyist or the registration as a lobbying firm lobbyist by filing a Notice of Withdrawal as provided in this regulation.
- (b) The Notice of Withdrawal shall contain an explanation of the reasons for submitting the Notice, shall be signed by the filer under penalty of perjury and shall be filed with the Secretary of State. After a valid Notice of Withdrawal has been filed, the filer is not subject to the prohibitions of Government Code Section 86203.

(c) The Franchise Tax Board shall not conduct an audit pursuant to Government Code Section 90001(a) of any person who has filed a Notice of Withdrawal, unless a determination has been made that the Notice of Withdrawal is invalid.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82039, 86100, 86102, 86103, and 90001, Government Code.

(Section filed 6-17-76, operative 7-17-76; Register 76, No. 25).

#### HISTORY

1. Amendment of section heading filed 8–27–81, operative 9–26–81, making the following changes:

Section heading deleted "(86100-86300)" after "Employees"; (Register 81, No. 35).

2. Amendment of subsection (a) and section heading filed as an emergency 5–28–86, operative 5–28–86, making the following changes:

In section heading "Withdrawal of Lobbyist Certification or Lobbying Firm Registration" substituted for "Withdrawal of Lobbyist Registration";

Subsection (a) added "certification or lobbying firm" after "filed a lobbyist," and "certification or" after "filing the," "a lobbying firm, as defined in Government Code Section 82038.5 and 2 Cal. Adm. Code Section 18238.5, or" after "registration statement," "the certification as a lobbyist or the" added after "may withdraw" and "lobbying firm" after "registration as a";

Certificate of Compliance must be transmitted no later than 9–25–86, or emergency language will be repealed by operation of law (Gov. C. § 11346.1(g)); Register 86, No. 22).

- 3. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).
- 4. Editorial correction of HISTORY 2 (Register 95, No. 17).

#### § 18610. Lobbyist Accounting.

- (a) Pursuant to Government Code Section 86110, a lobbyist shall maintain a journal or other form of record showing all activity expenses incurred or paid by the lobbyist and all monetary and non-monetary contributions of \$25 or more made or delivered by the lobbyist to state candidates or elected state officers, or made to committees controlled by or primarily formed to support such candidates or officers.
- (b) Every activity expense which must be reported by the lobbyist shall be supported by original source documents, such as receipts, invoices and cancelled checks, indicating for each expenditure:
  - (1) The full name of the payee;
- (2) The full name and official position of each elective state official, legislative official, agency official, state candidate or member of the immediate family of one of these individuals who was a beneficiary;
  - (3) The total number of all beneficiaries;
- (4) A description of the goods or services or other consideration for which the expenditure was made or incurred;
  - (5) The date and total amount of the transaction; and
  - (6) The amount of the expenditure attributable to each beneficiary.

In the event it is impractical to obtain a receipt or an invoice to support any expenditure, a written voucher shall be prepared to support such expenditure. This voucher shall be prepared in a timely manner and shall contain the information described in paragraphs (1) through (6).

- (c) All monetary contributions of \$25 or more made or delivered by the lobbyist to state candidates or elected state officers, or made to committees controlled by or primarily formed to support such candidates or officers shall be supported by cancelled checks or other bank records. In addition, the lobbyist shall keep records of monetary and non-monetary contributions of \$25 or more, indicating for each contribution:
  - (1) The full name of the payee;
- (2) The full name of the recipient of the contribution if other than the payee;
- (3) In the case of a non-monetary contribution, a description of the goods or services or other consideration provided; and
  - (4) The amount and date of the contribution.
- (d) All records which the lobbyist must keep by virtue of this regulation shall be maintained by the lobbyist for a period of five years from the date of the lobbyist's final report for the calendar year for which the activities were reported pursuant to Government Code Section 86113. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86110 and 91000.5. Government Code.

#### HISTORY

- New section filed 5-28-86 as an emergency; operative 5-28-86 (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-25-86. For history of former Section 18610, see Register 75, No. 31.
- 2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).
- 3. Editorial correction of NOTE (Register 95, No. 6).
- Amendment of subsection (d) and NOTE filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

#### § 18611. Lobbyist Reporting.

- (a) Reporting Activity Expenses. A lobbyist's periodic report shall disclose all activity expenses made or incurred during the period, regardless of whether they are paid for during the period. An activity expense previously reported as incurred but not paid need not be reported again when actual payment is made. When reporting activity expenses, the lobbyist shall show the full name of the payee, the date, the total amount of the expense, the amount attributable to each elective state official, legislative official, agency official, state candidate or member of the immediate family of one of these individuals who was a beneficiary of an activity expense, together with a description of the benefit and each official's full name, title and agency.
  - (b) Reporting Contributions.
  - (1) A lobbyist's periodic report shall disclose:
- (A) All monetary and non-monetary contributions totaling \$100 or more made from the lobbyist's personal funds, or from funds the lobbyist owns or controls, to state candidates, elected state officers, and committees controlled by or primarily formed to support such candidates and officers; and
- (B) All other monetary and non-monetary contributions totaling \$100 or more delivered in person by the lobbyist to state candidates and elected state officers.
  - (2) For each reportable contribution, the lobbyist shall disclose:
  - (A) The date the contribution was made;
- (B) The full name of the person or persons for whom the contribution was delivered if other than the lobbyist;
- (C) If the contribution is not made from personal funds, the source of the funds from which the contribution was made;
- (D) The full name of the candidate, officer or committee receiving the contribution; and
  - (E) The amount of the contribution.
- (3) For purposes of this subsection the term "personal funds" means all assets which are the personal property of the lobbyist.
- (c) The first report of a person filing pursuant to Government Code Section 86113 shall cover all the activities of the lobbyist during the calendar quarter in which he or she first qualified or filed a lobbyist certification pursuant to Government Code Section 86100. The cumulative period for the first report begins with the first day of the calendar quarter in which the lobbyist first qualified or the lobbyist's certification was filed. Note: Authority cited: Section 83112, Government Code. Reference: Section 86113, Government Code.

#### HISTORY

- New section filed 5-28-86 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-25-86.
- 2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38)
- 3. Amendment of subsections (b)(1)(A) and (b)(1)(B) filed 10–21–88; operative 11–20–88 (Register 88, No. 46).
- 4. Editorial correction relettering subsection (d) to (c) (Register 96, No. 43).

#### § 18612. Accounting by Lobbying Firms.

- (a) Pursuant to Government Code Section 86110, a lobbying firm shall maintain a cash receipts journal showing a record of all payments received in connection with lobbying activity. To the extent that payments received by a lobbying firm are only partially in connection with lobbying activities, the lobbying firm may keep records of payments received for lobbying separate from payments received in connection with non-lobbying activities. The cash receipts journal shall include for each payment received:
  - (1) The full name of the person making the payment;

- (2) If the payment was made on behalf of another person, the full name of the person on whose behalf of the payment was made;
  - (3) The date the payment was received;
  - (4) The amount of the payment;
- (5) If the payment was received during a calendar quarter after the calendar quarter in which services were provided, the calendar quarter in which the services were provided.
- (b) A lobbying firm shall maintain a cash disbursements journal or other form of record showing:
- (1) All activity expenses incurred or paid by the lobbying firm, including those reimbursed by a person who contracts with the lobbying firm for lobbying services;
- (2) All monetary and non-monetary contributions of \$25 or more made by the lobbying firm to state candidates, elected state officers and committees controlled by or primarily formed to support such candidates or officers; and
- (3) All payments to any other lobbying firm with which the lobbying firm subcontracts.
- (c) Every activity expense which must be reported by the lobbying firm shall be supported by original source documents, such as receipts, invoices and cancelled checks, indicating for each expenditure:
  - (1) The full name of the payee;
- (2) The full name and official position of each elective state official, legislative official, state candidate or member of the immediate family of one of those individuals who was a beneficiary;
  - (3) The total number of all beneficiaries;
- (4) A description of the goods or services or other consideration for which the expenditure was made or incurred;
  - (5) The date and total amount of the expenditure; and
  - (6) The amount of the expenditure attributable to each beneficiary.

In the event it is impractical to obtain a receipt or an invoice to support any expenditure, a written voucher shall be prepared to support such expenditure. This voucher shall be prepared in a timely manner and shall contain the information described in paragraphs (1) through (6).

- (d) All monetary contributions of \$25 or more made by the lobbying firm to state candidates, elected state officers and committees controlled by or primarily formed to support such candidates or officers shall be supported by cancelled checks or other bank records. In addition, the lobbying firm shall keep records of monetary or non-monetary contributions of \$25 or more, indicating for each contribution:
  - (1) The full name and address of the payee;
- (2) The full name and address of the recipient of the contribution if other than the payee;
- (3) In the case of a non-monetary contribution, a description of the goods or services or other consideration provided; and
- (4) The amount and date of the contribution. If the lobbying firm or a committee sponsored by the lobbying firm keeps records and files campaign statements with the Secretary of State pursuant to Chapter 4 of the Political Reform Act, no records are required by this subsection.
- (e) If the lobbying firm subcontracts with another lobbying firm for lobbying services, the payments to the subcontractor shall be supported by cancelled checks or other bank records. The lobbying firm records shall indicate for each payment:
  - (1) The full name of the subcontractor;
- (2) The full name of the person for whom the subcontractor was retained to lobby; and
  - (3) The date and amount of the payment.
- (f) All records which must be kept by virtue of this regulation shall be maintained for a period of five years from the date of the lobbying firm's final report for the calendar year for which the activities were reported pursuant to Government Code Section 86114.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86110 and 91000.5, Government Code.

#### HISTORY

New section filed 5-28-86 as an emergency; operative 5-28-86 (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-25-86.

- 2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).
- 3. New subsection (a)(2) and subsection renumbering filed 5–26–98; operative 5–26–98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- 4. Amendment of subsection (f) and NOTE filed 5–11–99; operative 5–11–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

#### § 18613. Reporting by Lobbying Firms.

(a) Reporting Payments Received.

The periodic reports filed by a lobbying firm shall show all payments received in connection with lobbying activity during the period. To the extent that payments received by a lobbying firm are only partially in connection with lobbying activities, the lobbying firm shall report only that portion which was received for lobbying activities. When reporting payments received, the lobbying firm shall disclose:

- (1) The full name, address and telephone number of the person or entity making the payment;
- (2) If the payment was made on behalf of another person, the full name, address and telephone number of the person on whose behalf the payment was made:
  - (3) The date the payment was received;
  - (4) The amount of the payment;
- (5) If the payment was received after the calendar quarter in which services were provided, the calendar quarter in which the services were provided.
  - (b) Reporting Payments Made.
- (1) Reporting Activity Expenses. The periodic report filed by a lobbying firm shall disclose all activity expenses made or incurred during the period, regardless of whether they are paid during the period. An activity expense previously reported as incurred but not paid need not be reported again when actual payment is made. When reporting activity expenses, the lobbying firm shall disclose the full name of the payee, the date and total amount of the expense, the total number of beneficiaries, the amount attributable to each elective state official, legislative official, state candidate or member of their immediate family who is a beneficiary of the expense, together with a description of the benefit and each official's full name, title and agency.
  - (2) Reporting Contributions.
- (A) Except as provided in subsection (B), all lobbying firms shall disclose all monetary and non-monetary contributions totaling \$100 or more made by the firm to state candidates, elected state officers, and committees supporting such candidates or officers. For each reportable contribution, the firm shall disclose the date the contribution was made, the candidate, officer or committee receiving the contribution, and the amount of the contribution.
- (B) Notwithstanding subparagraph (A), if a lobbying firm has made contributions totaling \$100 or more to an elected state officer, state candidate, or a committee supporting such an officer or candidate and the firm or a committee sponsored by the firm has previously reported those contributions in a campaign statement pursuant to Chapter 4 of the Political Reform Act which has been filed with the Secretary of State, the firm may disclose only the name and identification number of its committee on its periodic report in lieu of the information required by subparagraph (A) with respect to those contributions.
- (c) Reporting Specific Lobbying Interests of Persons Who Contract with the Lobbying Firm for Lobbying Services.
- (1) For each client, the lobbying firm shall report each bill or administrative action with regard to which a partner, owner, officer or employee of the lobbying firm either engaged in direct communication, or was directed by that client to engage in direct communication, with a qualified official on behalf of that client for the purpose of influencing legislative or administrative action during the reporting period, either by reference to its legislative or administrative identification number or by brief textual description.
- (2) A lobbying firm shall not report bills or administrative actions which have "died" prior to the reporting period, shall not report bills or administrative actions which the lobbying firm is only "watching" or

"monitoring" and shall not report bills or administrative actions which the lobbying firm has not attempted to influence during the reporting period.

(3) The definitions contained in 2 Cal. Code of Regs. Section 18239 of the terms "direct communication," "qualifying official" and "influence legislative or administrative action" shall apply to this subsection. NOTE: Authority cited: Section 83112, Government Code. Reference: Section 86114, Government Code.

#### HISTORY

- 1. New section filed 5–28–86 as an emergency; operative 5–28–86. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86 (Register 86, No. 22).
- 2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).
- 3. Amendment of subsections (b)(2)(A), (b)(2)(B) and (c)(3) filed 10–21–88; operative 11–20–88 (Register 88, No. 46).
- 4. Amendment of subsection (c)(3) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- New subsection (a)(2) and subsection renumbering filed 5-26-98; operative 5-26-98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).

#### § 18614. Payments for Lobbying Services.

- (a) The following payments from a client to a lobbying firm shall be considered payments for lobbying services:
- (1) Payments for services related to a matter on which the client expressly or implicitly authorizes the lobbying firm to communicate directly with an elected state official, legislative official or agency official for the purpose of influencing legislative or administrative action.
- (2) Payments for legislative—related services only if, within one year after the services are provided, the client, either directly or through an affiliated entity, expressly or implicitly authorizes the lobbying firm to communicate directly with an elected state official, legislative official or agency official for the purpose of influencing legislative or administrative action on the same or substantially the same matter.
- (3) Payments for research or preparation of a proposed initiative measure only if, within one year after the initiative—related services are provided, the client, either directly or through an affiliated entity, expressly or implicitly authorizes the lobbying firm to communicate directly with an elected state official, legislative official or agency official for the purpose of influencing legislative or administrative action on the same or substantially the same matter. However, such payments need not be reported if they are required to be disclosed, and are in fact disclosed pursuant to Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.
- (b) The following payments from a client to a lobbying firm shall not be considered payments for lobbying services:
  - (1) Payments for litigation.
- (2) Payments for legislative-related or initiative-related services performed by a lobbying firm for a client which are not reportable pursuant to subsections (a)(2) or (a)(3). However, payments for legislative-related services shall be reported by the client as "other payments to influence legislative or administrative action" pursuant to Government Code Section 86116(i) if either of the following applies:
- (A) At the time the payment is made, the client is required to be registered on the lobbying firm's registration statement.
- (B) Within one year after the services are provided, the client, either directly or through an affiliated entity, expressly or implicitly authorizes another lobbying firm or a lobbyist employed by the client to communicate directly with an elected state official, legislative official or agency official for the purpose of influencing legislative or administrative action on the same or substantially the same matter.
  - (c) The following definitions apply to this section:
- (1) "Legislative-related services" includes researching, monitoring, analyzing or drafting statutes, regulations or pending or proposed legislative or administrative action, providing advice or recommending strategy concerning pending or proposed legislative or administrative action, and similar services in the absence of express or implied authorization to engage in direct communication.

- (2) "Direct communication" means appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any elected state official, legislative official or agency official, either personally or through an agent who acts under one's direct supervision, control or direction.
- (3) "Affiliated entity" includes, but is not limited to, an organization which has a parent or subsidiary relationship to the client, an organization that is primarily funded or managed by the client or the parent entity of the client, or an organization of which the client is a member.
- (d) When a payment for initiative-related or legislative-related services made to a lobbying firm in a previous reporting period must be reported retroactively pursuant to this section, the payment shall be reported on the report for the then current calendar quarter and the lobbying firm and lobbyist employer shall indicate the calendar quarter in which the payment was made or received. If the payment was previously reported in the current calendar year as "other payments to influence legislative or administrative action," the lobbyist employer shall indicate on the report for the then current calendar quarter that the amount has been deducted from "other payments to influence legislative or administrative action" and instead reported as a payment to a lobbying firm. For purposes of subsections (a)(2) and (a)(3), the lobbying firm and lobbyist employer shall indicate, in addition to the information required by 2 Cal. Code Regs. Sections 18613(a) and 18616(b), that the payment was for initiative-related or legislative-related services and the date upon which the person making the payment or the affiliated entity authorized the lobbying firm to engage in direct communication.
- (e) This section shall not be construed to require any entity to report payments it receives for services prior to the calendar quarter in which the entity qualifies as a lobbying firm.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86114 and 86116, Government Code.

#### HISTORY

1. New section filed 8-25-88; operative 9-24-88 (Register 88, No. 36). For prior history, see Register 86, No. 38.

# § 18615. Accounting by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action.

- (a) Pursuant to Government Code section 86110, lobbyist employers shall keep detailed records of payments in the following categories:
  - (1) Payments to lobbying firms;
  - (2) Payments to lobbyists;
  - (3) Activity expenses;
- (4) Other payments to influence legislative or administrative action. This includes payments for or in connection with:
  - (A) Support or assistance of lobbyists;
- (B) Direct communication with a legislative, agency or elective state official for the primary purpose of influencing legislative or administrative action; and
- (C) Soliciting or urging persons other than the lobbyist employer's employees to enter into direct communication with a legislative, agency or elective state official for the primary purpose of influencing legislative or administrative action.
- (5) Contributions to elected state officers, state candidates and committees controlled by or primarily formed to support such officers or candidates;
- (b) The lobbyist employer shall keep records using one of the following methods:
- (1) The lobbyist employer may keep records of payments in connection with lobbying separate from records of activities which are not described in subdivision (a); or
- (2) The lobbyist employer may use any system with records maintained in accordance with accepted accounting principles.
- (c) Records of payments by the lobbyist employer shall be supported by cancelled checks or other bank records, and shall include:
- (1) All payments in connection with lobbying activities made to or on behalf of a lobbying firm, including but not limited to fees, retainers and reimbursement of expenses. To the extent that payments to a lobbying

firm are only partially in connection with lobbying activities, the lobbyist employer may keep records of payments made for lobbying separate from payments made in connection with non-lobbying activities. Detailed records shall include:

- (A) The full name of the payee;
- (B) If the payee is a person other than the lobbying firm, the full name of both the payee and the lobbying firm;
  - (C) The date and amount of the payment; and
- (D) The calendar quarter during which the services paid for were rendered.
- (2) All direct or indirect payments, such as salaries, fees and reimbursement of expenses, advances or other payments made to a lobbyist. Salary includes gross wages paid, plus any fringe benefits which are in lieu of wages such as the granting of stock options or purchase of annuities, but does not include routine fringe benefits such as the lobbyist employer's contributions to a health plan, retirement plan or payroll taxes. To the extent payments made to a lobbyist are only partially in connection with his or her activities as a lobbyist, the lobbyist employer may apportion the payments based on the percentage of the lobbyist's compensated time which is spent influencing or attempting to influence legislative or administrative action. Detailed records shall include:
  - (A) The full name of the payee; and
  - (B) The date and amount of the payment.
- (3) All activity expenses incurred or paid by the lobbyist employer, other than those activity expenses incurred by the lobbyist which shall be recorded as reimbursements to the lobbyist or "other payments to influence legislative or administrative action" under the provisions of subdivision (c)(4), as appropriate. Records to be maintained under this subdivision include:
  - (A) The full name of the payee;
- (B) The full name and official position of each elective state official, legislative official, agency official, state candidate or member of the immediate family of one of those individuals who was a beneficiary;
  - (C) The total number of all beneficiaries;
- (D) A description of the goods or services or other consideration for which the payment was made or incurred;
  - (E) The date and total amount of the expenditure; and
  - (F) The amount of the payment attributable to each beneficiary.
- (4) All other payments to influence legislative or administrative action, including:
- (A) The full name, title and proportionate share of compensation paid to each employee, other than a lobbyist, who is engaged for 10 percent or more of his or her compensated time in a calendar month in or in connection with any of the activities described in subdivision (a). Such employees include those providing research services and those preparing materials to be used by a lobbyist or to be used in direct communication or in soliciting or urging others to engage in direct communication for the primary purpose of influencing legislative or administrative action. Compensation includes gross wages paid plus any benefits which are in lieu of wages such as the granting of stock options or the purchase of annuities. It does not include, however, routine fringe benefits, such as the employer's contribution to health plans, retirement plans, etc., which are made on behalf of all employees nor does it include the payment of the employer's payroll taxes.
- (B) The payment by the lobbyist employer of expenses incurred by a lobbyist;
- (C) The payment of expenses incurred by the lobbyist employer for goods or services used by a lobbyist or used to support or assist a lobbyist in connection with his or her activities as a lobbyist;
- (D) For state and local government agencies that file reports pursuant to Government Code sections 86115 and 86116, the payment of dues or similar payments made to any organization, including a federation, confederation, or trade, labor, or membership organization, that makes expenditures equal to 10 percent of its total expenditures, or fifteen thousand dollars (\$15,000) or more, during any calendar quarter, to influence legislative or administrative action;

- (E) The payment of any other expense which would not have been incurred but for the lobbyist employer's activities to influence or attempt to influence legislative or administrative action, i.e., those activities described in subdivision (a), including, but not limited to, office overhead and operating expenses, payments to expert witnesses and expenses incurred by employees other than a lobbyist.
- (F) For filers reporting payments in connection with ratemaking or quasi-legislative proceedings before the California Public Utilities Commission as specified in Government Code section 86116(h)(2), the full name, title, and compensation paid to each attorney for time spent appearing as counsel or preparing to appear as counsel in those proceedings; and the full name, title and compensation paid to each witness for time spent testifying or preparing to testify at those proceedings.
- (G) Detailed records for subdivisions (c)(4)(B), (C), (D), (E) and (F)
  - 1. The full name of the payee;
  - 2. The date and amount of the payment; and
- A description of the goods or services or other consideration for which the payment was made.
- (5) All monetary and non-monetary contributions of \$25 or more made by the lobbyist employer to an elected state officer, a state candidate or committees controlled by or primarily formed to support such officers or candidates. Cancelled checks or other bank records shall support the monetary contributions. In addition, for each monetary and non-monetary contribution, the records shall indicate:
  - (A) The full name of the payee;
- (B) The full name of the recipient of the contribution if other than the payee;
- (C) In the case of a non-monetary contribution, a description of the goods or services or other consideration provided; and
- (D) The date and amount of the payment. If the lobbyist employer or a committee sponsored by the lobbyist employer keeps records and files campaign statements with the Secretary of State pursuant to Chapter 4 of the Political Reform Act, no records are required by this paragraph.
- (6) No records shall be required for payments which are not reportable pursuant to 2 Cal. Code Regs. section 18616(g)(1), (2), (3) and (4).
- (d) All records which must be kept by virtue of this regulation shall be maintained for a period of five years from the date of the filer's final report for the calendar year for which the activities were reported pursuant to Government Code section 86116.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86110 and 91000.5, Government Code.

#### HISTORY

- 1. New section filed 8-1-75 as an emergency; operative 8-1-75. Certificate of Compliance included (Register 75, No. 31).
- 2. Repealer of subsections (a) (1) (B) 3, (b) (1) (C) and (b) (1) (D) and new subsections (a) (1) (B) 3, (a) (1) (B) 4 and (b) (1) (C) filed 8–20–76; operative 9–19–76 (Register 76, No. 34).
- 3. Amendment of subsections (a)–(d) and new subsections (e) and (f) filed 10–13–78; operative 1–1–79 (Register 78, No. 41).
- 4. New subsections (b), (c) and (e) filed 1–25–80; operative 2–24–80 (Register 80, No. 4).
- 5. Amendment of section heading and subsections (d) (2) filed 11–5–82; operative 11–5–82 (Register 82, No. 45).
- Amendment of subsections (a)–(c) filed 12–15–83; operative 1–14–84 (Register 83, No. 51).
- 7. Repealer and new section filed 5–28–86 as an emergency; operative 5–28–86 (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86.
- 8. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).
- 9. Editorial correction of History Note 5 (Register 95, No. 6).
- 10. New subsections (c)(1)(B) and (c)(4)(D), subsection relettering, and amendment of subsections (c)(4)(A) and newly designated subsections (c)(4)(F) and (c)(4)(G) filed 5-26-98; operative 5-26-98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- 11. Amendment of subsection (d) and NoTE filed 5–11–99; operative 5–11–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
- 12. Editorial correction of subsection (c)(4)(G) (Register 2002, No. 22)
- 13. Amendment filed 6-17-2002; operative 7-17-2002 (Register 2002, No. 25).

# § 18616. Reports by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action.

- (a) Payments to be Reported in General. Persons filing periodic reports under Government Code section 86116 shall report payments in the following categories:
  - (1) Payments to lobbying firms.
  - (2) Payments to lobbyists.
  - (3) Activity expenses.
- (4) Other payments to influence legislative or administrative action, specifically, payments for or in connection with:
  - (A) Support or assistance of lobbyists;
- (B) Direct communication with a legislative, agency, or elective state official for the primary purpose of influencing legislative or administrative action; and
- (C) Soliciting or urging persons other than the filer or the filer's employees to enter into direct communication with a legislative, agency, or elective state official for the primary purpose of influencing legislative or administrative action.
- (5) Contributions to elected state officers, state candidates, and committees controlled by or primarily formed to support those officers or candidates.
- (b) Payments to Lobbying Firms. Lobbyist employers shall disclose on their periodic reports the total amount of payments, including reimbursement for expenses, made to each lobbying firm during the period, and the name and address of the lobbying firm which received the payments. If the payment to the lobbying firm was made through another person, the lobbyist employer shall report the name and address of both the payee and the lobbying firm. The lobbyist employer shall indicate on the report if the payment was made for services provided in a previous calendar quarter. To the extent that payments to a lobbying firm are only partially in connection with lobbying activities, the lobbyist employer shall report only that portion which was made for lobbying activities.
- (c) Payments to Lobbyists. Lobbyist employers shall disclose on their periodic reports the total amount of all direct and indirect payments, such as salaries and reimbursement of expenses, made to lobbyists during the filing period in consideration for or in connection with their activities as lobbyists. A lobbyist's salary includes gross wages paid plus any benefits which are in lieu of wages such as the granting of stock options or the purchase of annuities. It does not include, however, routine fringe benefits, such as the employer's contribution to health plans, retirement plans, etc., which are made on behalf of all employees nor does it include the payment of the employer's payroll taxes. To the extent payments made to a lobbyist are only partially in connection with his or her activities as a lobbyist, a filer may apportion the payments based on the percentage of the lobbyist's compensated time which is spent influencing or attempting to influence legislative or administrative action.
- (d) Activity Expenses. All persons filing reports under Government Code section 86116 shall disclose each activity expense made or incurred during the period, regardless of whether it is paid for during the period. An activity expense previously reported as incurred but not paid need not be reported again when actual payment is made. When reporting activity expenses, the filer shall show the full name and address of the payee, the total amount of the expense, the amount attributable to each elected state officer, legislative official, agency official, state candidate or member of the immediate family of one of those persons who is the beneficiary of an activity expense, together with a description of the benefit and each official's full name, title and agency. The filer shall also report the total of all activity expenses incurred during the period.
  - (e) Contributions.
- (1) Except as provided in paragraph (2), all persons filing periodic reports under Government Code section 86116 shall disclose all monetary and non-monetary contributions totaling \$100 or more made by the filer to state candidates, elected state officers, and committees controlled by or primarily formed to support those officers or candidates. For each reportable contribution, the filer shall disclose the date the contribution was

- made, the candidate, officer, or committee receiving the contribution, and the amount of the contribution.
- (2) Notwithstanding paragraph (1), if a filer has made contributions totaling \$100 or more to an elected state officer, state candidate, or a committee controlled by or primarily formed to support an elected state officer or state candidate, and the filer or a committee sponsored by the filer has previously reported those contributions in a campaign statement pursuant to Chapter 4 of the Political Reform Act which has been filed with the Secretary of State, the filer may disclose only the name and identification number of its committee on its periodic report in lieu of the information required by paragraph (1) with respect to those contributions.
- (f) Other Payments to Influence Legislative or Administrative Action. All persons who file periodic reports under Government Code section 86116 shall report the total of all other payments to influence legislative or administrative action made by the filer during the reporting period. The total amount reported shall include the following:
- (1) Compensation of Employees Other Than Lobbyists. This shall include a proportionate share of the compensation paid to employees other than lobbyists who are engaged for 10 percent or more of their compensated time in a calendar month in or in connection with the activities described in subdivision (a)(4) of this regulation. Such employees include those providing research services and those preparing materials to be used by a lobbyist or to be used in direct communication or in soliciting or urging others to engage in direct communication for the primary purpose of influencing legislative or administrative action. Compensation includes gross wages paid plus any benefits which are in lieu of wages such as the granting of stock options or the purchase of annuities. It does not include, however, routine fringe benefits, such as the employer's contribution to health plans, retirement plans, etc., which are made on behalf of all employees nor does it include the payment of the employer's payroll taxes.
- (2) Payments Other Than Compensation. This shall include all of the following:
- (A) Payments made by the filer for expenses incurred by a lobbyist in connection with his or her activities as a lobbyist. All such expenses paid directly by the filer shall be reported as "other payments to influence legislative or administrative action," regardless of the nature of the expense.
- (B) Payment by the filer of expenses incurred by the filer for goods or services used by a lobbyist or used to support or assist a lobbyist in connection with his or her activities as a lobbyist.
- (C) Payments of any other expenses which would not have been incurred but for the filer's activities to influence or attempt to influence legislative or administrative action, i.e., those activities described in subdivision (a)(4) of this regulation.
  - (g) Exceptions.
- (1) Notwithstanding subdivision (f) of this regulation, a filer need not report compensation or other payments for services which are solely secretarial, clerical, or manual or are limited solely to the compilation of data and statistics.
- (2) Except for payments to lobbyists and the compensation of employees other than lobbyists which must be reported under subdivision (f)(1) of this regulation, a filer need not report any regular, ongoing business overhead which would continue to be incurred in substantially similar amounts regardless of the filer's activities to influence legislative or administrative action.
- (3) A filer does not have to report any part of the costs of producing a regularly published newsletter or periodical whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This exception applies only to those costs regularly incurred in publishing and distributing the newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or altered in style, size, or format for the primary purpose of influencing or attempting to influence legislative or administrative action, such additional costs are reportable under subdivision (f)(2)(C) of this regulation.

- (4) Except as provided in Government Code section 86116.5, which is applicable to all state and local agencies that file reports pursuant to Government Code sections 86115 and 86116, dues or similar payments made by any person for membership in a bona fide association, including any federation, confederation, or trade, labor, or membership organization, some portion of which is used to influence legislative or administrative action, are not payments to influence legislative or administrative action.
- (5) Reduced Reporting. In lieu of reporting expenses in accordance with subdivision (f) of this regulation, a filer that makes payments to influence a ratemaking or quasi-legislative proceeding, as defined in Government Code section 82002(b) or (c), before the California Public Utilities Commission shall report the total of any payments made for the following:
- (A) Compensation paid to all attorneys for time spent appearing as counsel and preparing to appear as counsel in those proceedings, excluding time spent preparing written testimony for those proceedings;
- (B) Compensation paid to all witnesses for time spent testifying and preparing to testify in those proceedings, excluding time spent preparing written testimony for those proceedings; and,
- (C) For purposes of subdivision (g)(5), "compensation" shall have the same meaning as in subdivision (f)(1) of this regulation.
- (D) The reduced reporting of Government Code section 86116(h)(2) and this subdivision does not apply to payments to an individual who is a lobbyist under Government Code section 82039, to payments for expenses incurred by that individual or to payments described in subdivision (a)(4)(C).
- (h) Optional Reporting. In addition to reporting total payments for any period, a filer may apportion payments reported on the basis of whether they were made to influence legislative action or to influence administrative action.
- (i) Applicability of Government Code section 86115(b). For the purpose of determining whether Government Code section 86115(b) is applicable to any person, all payments made during any calendar quarter which are required to be reported by this regulation shall be combined and a report shall be filed if the total is \$5,000 or more. If, however, the only reportable payments made are activity expenses within the meaning of Government Code section 86111(a), no report shall be required.
  - (j) Reporting Specific Lobbying Interests.
- (1) The filer shall report each bill or administrative action with regard to which a partner, owner, officer or employee of the filer, or a lobbying firm with which the filer has contracted, either has engaged in direct communication, or has been directed by the filer to engage in direct communication, with a qualified official for the purpose of influencing legislative or administrative action on behalf of the filer during the reporting period, either by reference to its legislative or administrative identification number or by brief textual description.
- (2) A filer shall not report bills or administrative actions which have "died" prior to the reporting period, shall not report bills or administrative actions which the filer or its agent is only "watching" or "monitoring," and shall not report bills or administrative actions which the filer or its agent has not attempted to influence during the reporting period.
- (3) The definitions contained in 2 Cal. Code Regs. section 18239 of the terms "direct communication," "qualifying official," and "influence legislative or administrative action" shall apply to this subdivision.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86115, 86116 and 86116.5, Government Code.

#### HISTORY

- 1. New section filed 10-13-78 as an emergency; designated effective 1-1-79 (Register 78, No. 41)
- Certificate of Compliance filed 11-24-78 (Register 78, No. 47).
- . Amendment of subsection (d) filed 12-19-79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 51).
- 4. New subsection (e) filed 1-25-80; effective thirtieth day thereafter (Register 80, No. 4).

- 5. Amendment filed 3–8–84; effective thirtieth day thereafter (Register 84, No.
- 6. Amendment of subsection (e) filed 5-29-84; effective thirtieth day thereafter (Register 84, No. 22)
- 7. Repealer and new section filed 5-28-86 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86. Certificate of Compliance filed 9–15–86 (Register 86, No. 38).
- Amendment of subsections (e)(1), (e)(2) and (j)(3) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
- 10. Amendment filed 3-28-94; operative 3-28-94 (Register 94, No. 13).
- 11. Editorial correction of subsections (d) and (j)(3) (Register 95, No. 6). 12. Amendment of subsection (b) filed 5-26-98; operative 5-26-98. Submitted
- to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- 13. Amendment filed 6–17–2002; operative 7–17–2002 (Register 2002, No. 25). 14. Amendment of subsections (g)(5) and (g)(5)(D) filed 5-17-2004; operative
- 5-17-2004 pursuant to Government Code section 11343.4 (Register 2004, No.

#### § 18616.4. Reports by Lobbying Coalitions Which Are Lobbyist Employers; Reports by Members of Lobbying Coalitions.

- (a) Definition of Lobbying Coalition. A lobbying coalition is a group of ten or more persons formed primarily to influence legislative or administrative action, whose members make payments to the coalition for the purpose of sharing the expenses of employing a lobbyist or contracting for the services of a lobbying firm. A bona fide federation, confederation or trade, labor or membership organization is not a lobbying coalition if it is ongoing in nature and its membership services are not limited to influencing legislative or administrative action. No person shall qualify as a lobbying firm or lobbyist employer solely by virtue of making payments to a lobbying coalition.
- (b) Reporting by Lobbying Coalitions. A lobbying coalition shall file reports required of lobbyist employers pursuant to Government Code Section 86116. In addition, the lobbying coalition shall file with its lobbyist employer reports a form, prepared by the Commission, which discloses the following information:
  - (1) The name and business address of each member.
- (2) The amount paid to the coalition by each member during the period covered by the report.
- (3) The cumulative amount paid to the coalition by each member since January 1 of the biennial legislative session covered by the report.
- (c) Reporting by Lobbying Firms and Lobbyist Employers Who are Members of a Lobbying Coalition. On a separate form which shall be attached to the filer's periodic report, a lobbyist employer or lobbying firm who makes payments to a lobbying coalition shall report the following information:
  - (1) The name and business address of the lobbying coalition.
- (2) The amount the filer paid to the coalition during the period covered by the report.
- (3) The cumulative amount the filer paid to the coalition since January 1 of the biennial legislative session covered by the report.

In addition, a lobbyist employer who makes payments to a lobbying coalition shall report those payments as "other payments to influence legislative or administrative action" under Section 18616(f).

(d) Reporting by Persons Who Spend \$5,000 or More in a Calendar Quarter to Influence Legislative or Administrative Action. This section shall not eliminate reporting pursuant to Government Code Section 86115(b). A person who spends \$5,000 or more in a calendar quarter to influence legislative or administrative action shall report payments to a lobbying coalition in the same manner as required for lobbyist employers in subdivision (c).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86114, 86115 and 86116, Government Code.

#### HISTORY

- 1. New section filed 3-31-88; operative 4-30-88 (Register 88, No. 16).
- 2. Amendment filed 7-27-89; operative 8-26-89 (Register 89, No. 31).

3. Amendment of subsections (b)(3) and (c)(3) filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

#### § 18616.5. Reports by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action: Reporting **Employees Who Engaged in Direct** Communication on Behalf of the Filer. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 86116(f), Government Code.

- 1. New section filed 9–15–86; operative 10–15–86 (Register 86, No. 38).
- 2. Repealer filed 7–9–87; operative 8–8–87 (Register 87, No. 29).

#### § 18617. Early Filing of Periodic Reports.

Whenever a person is required to file a periodic report pursuant to Government Code Section 86114 or 86116, that person may file the report at any time prior to the time specified in Government Code Section 86117 so long as the report includes all information required for the period covered by the report. If the filer engages in any reportable activity after filing the periodic report, but on or before the last day of the calendar quarter for which the report is filed, the filer must, not later than the time specified in Government Code Section 86117, amend the filed report to include all such reportable activity.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 86117, Government Code.

#### HISTORY

- 1. New section filed 5-28-86 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86. For history of former section, see Register 80, No.4.
- 2. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).

### § 18618. Lobbying Reports; Where to File. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86114, 86116 and 86117, Government Code.

- 1. Amendment filed 5-10-76; effective thirtieth day thereafter (Register 76, No.
- 2. Amendment filed 1-25-80; effective thirtieth day thereafter (Register 80, No.
- 3. Repealer and new section filed 5-28-86 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86. 4. Certificate of Compliance filed 9–15–86 (Register 86, No. 38).
- 5. Repealer filed 7–9–87; operative 8–8–87 (Register 87, No. 29).

#### § 18619. Business Entities Retained to Influence Legislative or Administrative Actions: Definitions. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82032, 82039, 86101, 86107, 86108, 86109, and 86205, Government Code.

#### HISTORY

- 1. New section filed 8-1-875 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance included (Register 75, No. 31). 2. Amendment filed 10–13–78; designated effective 1–1–79 (Register 78, No. 41).
- 3. Amendment filed 8-27-81; effective thirtieth day thereafter (Register 81, No.
- 4. Editorial correction of subsection (f) filed 11–5–82 (Register 82, No. 45).
- 5. Amendment of subsection (f) filed 6-29-84; effective thirtieth day thereafter (Register 84, No. 26).
- 6. Amendment filed 12-21-84; effective thirtieth day thereafter (Register 84, No.
- 7. Amendment of subsection (f) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
- 8. Repealer filed 5-28-86 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-25-86.
- 9. Certificate of Compliance filed 9–15–86 (Register 86, No. 38).
- 10. Change without regulatory effect amending NOTE filed 8-31-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

#### § 18620. Reports by Lobbyist Employers and Persons Spending \$2500 or More to Influence Legislative or Administrative Action. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86108 and 86109(c), Government Code.

#### HISTORY

- 1. New section filed 9-18-75; effective thirtieth day thereafter (Register 75, No. 38).
- 2. New subsection (a)(6) filed 4–30–76; effective thirtieth day thereafter (Register 76, No. 18).
- 3. Amendment filed 10-13-78, as an emergency; designated effective 1-1-79 (Register 78, No. 41).
- 4. Certificate of Compliance filed 11-24-78 (Register 78, No. 47). For prior history see Register 78, No. 41
- 5. Amendment of subsections (d), (e) and (g) 1-25-80, effective thirtieth day thereafter (Register 84, No. 51).
- 6. Amendment filed 12-21-84; effective thirtieth day thereafter (Register 84, No.
- 7. Repealer filed 5-28-86, as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL with 120 days or emergency language will be repealed on 9-25-86.
- 8. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).

#### § 18621. Reporting Pursuant to Section 86108(b). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 86108(b), Government Code.

#### HISTORY

- 1. New section filed 9-18-75; effective thirtieth day thereafter (Register 75, No.
- 2. Amendment of subsection (b) filed 10-3-75 as an emergency; designated effective 10-18-75 (Register 75, No. 40).
- 3. Repealer filed 10-13-78; designated effective 1-1-79 (Register 78, No. 41).

#### § 18622. Consolidated Reporting by Lobbyists and Their Employers (86107, 86109). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86107 and 86109, Government Code.

#### HISTORY

- 1. New section filed 10-13-78, operative 1-1-79 (Register 78, No. 41).
- 2. Repealer filed as an emergency 5-28-86, operative 5-28-86; Certificate of Compliance must be transmitted no later than 9-25-86, or emergency language will be repealed by operation of law (Gov. C. § 11346.1(g)); (Register 86, No.
- 3. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).

#### § 18623. Gifts from Lobbyists and Lobbying Firms; Honoraria.

COMMENT: For free admission, food, beverages, transportation, lodging, and subsistence provided to an elected state officer, legislative official, agency official, or state candidate in connection with a speech, panel, seminar, or similar service, see California Code of Regulations, Title 2, Section 18950.3

NOTE: Authority cited: Sections 83112 and 86201, Government Code. Reference: Sections 86111, 86112, 86113, 86114, 86115 and 86116, Government Code.

#### HISTORY

- 1. New section filed 6–17–76 as an emergency; operative 6–17–76. Certificate of Compliance included (Register 76, No. 25)
- 2. Amendment of subsections (a) and (b) filed 10-13-78; operative 1-1-79 (Register 78, No. 41)
- 3. Amendment of section heading, subsections (a), (b) and new subsection (c) filed 8–27–81; operative 9–26–81 (Register 81, No. 35).
- 4. Amendment of section heading and subsections (b) and (c) filed 5-28-86 as an emergency; operative 5-28-86 (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86.
- 5. Certificate of Compliance filed 9–15–86 (Register 86, No. 38).
- 6. Amendment of subsection (a) filed 10-19-89; operative 11-18-89 (Register 89, No. 42)
- 7. Repealer and new COMMENT filed 1-27-93; operative 2-26-93 (Register 93, No. 5).

#### § 18624. Lobbyist Arranging Gifts.

A lobbyist "arranges for the making of a gift" within the meaning of Government Code Section 86203 if the lobbyist, either directly or through an agent, does any of the following:

(a) Delivers a gift to the recipient.

- (b) Acts as the representative of the donor, if the donor is not present at the occasion of a gift. This does not include accompanying the recipient to an event where the donor will be present.
- (c) Invites or sends an invitation to an intended recipient regarding the occasion of a gift.
- (d) Solicits responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift.
- (e) Is designated as the representative of the donor to receive responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift.
- (f) Acts as an intermediary in connection with the reimbursement of a recipient's expenses.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 86203, Government Code.

#### HISTORY

1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).

### § 18625. Loans from Lobbyist or Lobbying Firm; Placing Official Under Personal Obligation.

- (a) For purposes of Government Code Section 86205(a), placing an elected state officer, legislative official, agency official, or state candidate under personal obligation includes arranging or making a loan whether secured or unsecured, to the elected state officer, legislative official, agency official or state candidate, either directly or through an agent.
- (b) A lobbyist or lobbying firm "arranges" a loan when the lobbyist or lobbying firm:
- (1) Refers the elected state officer, legislative official, agency official, or state candidate, who is to be the recipient of the loan, to an individual for the purpose of facilitating the making of the loan and has any contact with any individual to facilitate the making of the loan; or,
- (2) Cosigns, guarantees, furnishes security for, or endorses the loan for the elected state officer, legislative official, agency official, or state candidate.

NOTE: Authority cited: Section 83112, Government Code, Reference: Section 86205, Government Code.

#### HISTORY

1. New section filed 10-19-89, operative 11-18-89 (Register 89, No. 42).

#### § 18626. Contributions from Lobbyists. [Repealed]

NOTE: Authority cited: Sections 83112, Government Code. Reference: Sections 82039, 82039.5, 85313(c), 85704, 86104(d) and 86105(e), Government Code.

HISTORY

- New section filed 8-4-97; operative 8-4-97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only (Register 97, No. 32).
- Change without regulatory effect adding explanatory Note filed 7-18-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
- 3. Repealer filed 5-4-2001; operative 6-3-2001 (Register 2001, No. 18).
- Change without regulatory effect amending Note filed 8–31–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

#### § 18630. Home Hospitality (86203).

- (a) The cost of providing hospitality involving food, beverage or occasional lodging at the home of a lobbyist is a gift within the meaning of Section 86203 and is reportable under the provisions of Section 86113 only if:
- (1) Any part of the cost of such hospitality is paid for by the lobbyist's employer or lobbying firm directly; or
- (2) The lobbyist is reimbursed by his or her lobbyist employer or lobbying firm for any part of the cost of such hospitality; or
- (3) The lobbyist deducts any part of the cost of such hospitality as a business expense on any tax return, either State or Federal; or
- (4) There is an understanding between the lobbyist and his or her lobbyist employer or lobbying firm that the amount of compensation received by the lobbyist includes a portion to be utilized by the lobbyist to provide gifts of hospitality in the lobbyist's home.
- (b) In determining the applicability of subsections (a)(1) through (a)(4) above, the cost of providing hospitality does not include any part of the value or rental of the home of the lobbyist, nor does it include any depreciation on the premises where the hospitality is extended.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 86203, Government Code.

#### HISTORY

- 1. New section filed 11-4-75; operative 12-4-75 (Register 75, No. 45).
- 2. Amendment of section heading and subsections (a)–(d) filed 10–13–78; operative 1–1–79 (Register 78, No. 41).
- 3. Amendment of subsection (a) filed 5–28–86 as an emergency; operative 5–28–86 (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–25–86.
- 4. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).

#### § 18640. Activity Expenses.

- (a) When reporting activity expenses as required under Government Code section 86112 for events described under 2 Cal. Code Regs. section 18946.2, subdivisions (a) and (b), the value of the expense reported by any person required to file a periodic report under Article 1 of Chapter 6 of this title for each reportable person attending the event shall be calculated on a pro rata share of the cost of the event.
- (b) Notwithstanding subdivision (a) of this regulation, if an official notifies the filer, in writing, that the official attended the event but that the official did not stay for any meal or entertainment, and that the official received only minimal appetizers and drinks, the value of the gift received is the cost of the food and beverage consumed by the official and guests accompanying the official, plus the value of any specific item that is presented to the official at the event. For purposes of this subdivision, "entertainment" means a feature show or performance intended for an audience, and does not include music provided for background ambiance.

Upon receiving the above notification from the official, the value of the expense reported by the filer may be reported to reflect the value of gift pursuant to this regulation.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86112 and 86112.5, Government Code.

#### HISTORY

1. New section filed 5-2-2005; operative 5-2-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

#### § 18650. Reportable Exchanges (86107 and 86109). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86107 and 86109, Government Code.

#### HISTORY

- 1. Amendment filed 10–13–78; designated effective 1–1–79 (Register 78, No. 41).
- 2. Repealer filed 8-27-81; effective thirtieth day thereafter (Register 81, No. 35).

### Chapter 7. Conflicts of Interest

# Article 1. Conflicts of Interest; General Prohibition

### § 18700. Basic Rule; Guide to Conflict of Interest Regulations.

- (a) No public official at any level of state or local government may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying conflict of interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests, unless the public official can establish either: (1) that the effect is indistinguishable from the effect on the public generally, or (2) a public official's participation is legally required.
- (b) To determine whether a given individual has a disqualifying conflict of interest under the Political Reform Act, proceed with the following analysis:
- (1) Determine whether the individual is a public official, within the meaning of the Act. (See Government Code section 82048; 2 Cal. Code Regs. § 18701.) If the individual is not a public official, he or she does not have a conflict of interest within the meaning of the Political Reform Act

- (2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (See 2 Cal. Code Regs. § 18702.) If the public official is not making, participating in making, or using or attempting to use his/her official position to influence a government decision, then he or she does not have a conflict of interest within the meaning of the Political Reform Act.
- (3) Identify the public official's economic interests. (See 2 Cal. Code Regs. § 18703.)
- (4) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his/her official position to influence. (See 2 Cal. Code Regs. § 18704.)
- (5) Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to California Code of Regulations, title 2, section 18704. (See 2 Cal. Code Regs. § 18705.)
- (6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in California Code of Regulations, title 2, section 18705) on each economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See 2 Cal. Code Regs. § 18706.) If it is not reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If it is reasonably foreseeable that there will be a material financial effect on any of the public official's economic interests, and the official does not participate in the decision, determine whether the official may segment the decision into separate decisions to allow his or her participation in subsequent decisions. (See 2 Cal. Code Regs. § 18709.)
- (7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. If the official can establish that the reasonably foreseeable material financial effect on his or her economic interest is indistinguishable from the effect on the public generally, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If the reasonably foreseeable material financial effect on the public official's economic interest is distinguishable from the effect on the public generally, he or she has a conflict of interest within the meaning of the Political Reform Act. (See 2 Cal. Code Regs. § 18707.)
- (8) Determine if the public official's participation is legally required despite the conflict of interest. If the official can establish that his or her participation is legally required, he or she may participate in the governmental decision despite the conflict of interest. (See 2 Cal. Code Regs. § 18708.)

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103, Government Code.

#### HISTORY

- 1. Repealer and new section filed 12–17–76, as an emergency; effective upon filing (Register 76, No. 51). For prior history, see Register 76, No. 40.
- 2. Certificate of Compliance filed 3-31-77 (Register 77, No. 14).
- 3. Amendment of section heading and repealer of subsections (e) and (f) filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).
- 4. Amendment of section and NOTE filed 6-23-94; operative 6-23-94 (Register 94, No. 25).
- 5. Editorial correction of subsection (a)(2)(B) (Register 96, No. 43).
- 6. Amendment of subsection (d)(2) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 7. Editorial correction of subsection (d) (Register 98, No. 44).
- 8. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 9. Editorial change reformatting table (Register 98, No. 52).
- 10. Change without regulatory effect amending table filed 1–27–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 5).
- 11. Editorial correction of HISTORY 8 (Register 2000, No. 25).

- 12. Change without regulatory effect amending table filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
- 13. Amendment of subsections (b)(1) and (b)(8) filed 2–13–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).
- 14. Change without regulatory effect amending subsection (b)(8) filed 1–16–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).
- 15. Amendment of subsections (b)(1)-(8) filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).
- 16. Amendment of subsections (a), (b)(7) and (b)(8) filed 12–20–2005; operative 1–19–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 51).

### § 18700.1. Using Official Position to Influence (87100). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

#### HISTORY

- 1. New section filed 8–2–85; effective thirtieth day thereafter (Register 85, No. 33)
- Repealer filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 3. Editorial correction of HISTORY 2 (Register 2000, No. 25).

#### § 18701. Public Official, Definitions.

- (a) For purposes of Government Code section 82048, which defines "public official," and Government Code section 82019, which defines "designated employee," the following definitions apply:
- (1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority.
- (A) A committee, board or commission possesses decisionmaking authority whenever:
  - (i) It may make a final governmental decision;
- (ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
- (iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.
- (B) A committee, board, or commission does not possess decision-making authority under subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.
- (2) "Consultant" means an individual who, pursuant to a contract with a state or local government agency:
  - (A) Makes a governmental decision whether to:
  - (i) Approve a rate, rule, or regulation;
  - (ii) Adopt or enforce a law;
- (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
- (v) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract:
- (vi) Grant agency approval to a plan, design, report, study, or similar item:
- (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

- (B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code section 87302.
- (b) For purposes of Government Code section 87200, the following definitions apply:
  - (1) "Other public officials who manage public investments" means:
- (A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;
- (B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and
- (C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B) above.
- (2) "Public investments" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.
- (3) "Public moneys" means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.
- (4) "Management of public investments" means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.

COMMENT: In limited circumstances, the members of a nonprofit organization may be "public officials." (*In re Siegel* (1977) 3 FPPC Ops. 62.) NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 82048, 87100, 87200 and 87302, Government Code.

#### HISTORY

- New section filed 1–22–76; effective thirtieth day thereafter (Register 76, No. 4).
- Amendment of subsection (c) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
- 3. Amendment of subsection (b) filed 10–19–89; operative 11–18–89 (Register 89, No. 42).
- Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 5. Editorial correction of HISTORY 4 (Register 2000, No. 25)
- Amendment of section heading, section and NOTE filed 1-11-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
- Amendment filed 12–29–2005; operative 1–28–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 52).

#### § 18702. Making, Participating in Making, or Using or Attempting to Use Official Position to Influence a Government Decision, Defined.

(a) To determine if a public official is making, participating in making, or using or attempting to use his/her official position to influence a gov-

ernment decision, apply 2 Cal. Code Regs. sections 18702.1 through 18702.4, respectively.

(h) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley–Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1)–(a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003, 87100, 87101, 87105 and 87200, Government Code.

#### HISTORY

- 1. New section filed 1–22–76; effective thirtieth day thereafter (Register 76, No. 4).
- 2. Amendment filed 3–19–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 12).
- 3. Amendment filed 12–20–78; effective thirtieth day thereafter (Register 78, No. 51).
- Amendment of subsection (a) and (b) filed 7-5-79; effective thirtieth day thereafter (Register 79, No. 27).
- 5. Amendment of subsection (b) filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).
- 6. Amendment filed 6-22-87; operative 7-22-87 (Register 87, No. 26).
- Repealer and new section filed 10–17–88; operative 11–16–88 (Register 88, No. 43).
- 8. Amendment of subsection (c) filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- 9. Editorial correction of subsections (a) and (c) (Register 95, No. 50)
- Amendment of section heading, section and NOTE filed 3–26–96; operative 3–26–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 13).
- 11. Amendment of subsections (d)(2)–(3) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 12. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 14. Editorial correction of HISTORY 12 (Register 2000, No. 25)
- Amendment of section and NOTE filed 6-10-2003; operative 6-10-2003 (Register 2003, No. 24).

### § 18702.1. Determining When a Public Official is Making a Governmental Decision.

- (a) A public official "makes a governmental decision," except as provided in 2 Cal. Code Regs. section 18702.4, when the official, acting within the authority of his or her office or position:
  - (1) Votes on a matter;
  - (2) Appoints a person;
  - (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency;
- (5) Determines not to act, within the meaning of subdivisions (a)(1), (a)(2), (a)(3), or (a)(4), above, unless such determination is made because of his or her financial interest. When the determination not to act occurs because of the official's financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.
- (b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.
- (c) During a closed meeting of the agency, a disqualified official shall not be present when the decision is considered or knowingly obtain or review a recording or any other non–public information regarding the governmental decision.
- (d) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in making, or using or attempting to use his or her official position to influence a governmental decision relat-

ing to an agenda item which is noticed for a meeting subject to the provisions of the Bagley–Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1)–(a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

COMMENT: Nothing in this section authorizes or prohibits an agency by local rule or custom from requiring a disqualified member to step down from the dais and/or leave the chambers.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections  $81002,\,81003,\,87100,\,87101,\,87105$  and  $87200,\,$ Government Code.

#### HISTORY

- 1. New section filed 9–5–85; effective thirtieth day thereafter (Register 85, No. 36).
- 2. Amendment filed 10-17-88; operative 11-16-88 (Register 88, No. 43).
- 3. Amendment of subsection (a)(1) filed 3–14–95; operative 3–14–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
- 4. Amendment of subsections (a)(2), (a)(3)(E), (a)(4) and (c)–(c)(2) filed 12–11–95; operative 12–11–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 50).
- Amendment of subsection (a)(1) and NOTE filed 6–13–97; operative 6–13–97.
   Submitted to OAL for printing only (Register 97, No. 24).
- Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 7. Editorial correction of HISTORY 6 (Register 2000, No. 25).
- Amendment of section and Note filed 1–10–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
- Amendment of subsection (c) filed 1–16–2002; operative 2–15–2002 (Register 2002, No. 3).
- 10. Amendment of subsection (a), new subsection (d) and amendment of Note filed 6-10-2003; operative 6-10-2003 (Register 2003, No. 24).

#### § 18702.2. Determining When a Public Official is Participating in Making a Governmental Decision.

A public official "participates in making a governmental decision," except as provided in Title 2, California Code of Regulations, section 18702.4, when, acting within the authority of his or her position, the official:

- (a) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or
- (b) Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:
- (1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or
- (2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

#### HISTORY

- New section filed 7-24-85; effective thirtieth day thereafter (Register 85, No. 30).
- 2. Repealer of subsection (h) filed 6–22–87; operative 7–22–87 (Register 87, No. 26).
- 3. Amendment filed 10-17-88; operative 11-16-88 (Register 88, No. 43).
- Change without regulatory effect amending subsection (a)(2) filed 11-27-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 48).
- 5. Amendment of subsections (a)(1)–(3) and (d) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43)
- Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).

- 7. Editorial correction of HISTORY 6 (Register 2000, No. 25).
- 8. Amendment of subsection (a) filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).

# § 18702.3. Determining When a Public Official is Using or Attempting to Use His/Her Official Position to Influence a Governmental Decision.

- (a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.
- (b) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

#### HISTORY

- 1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).
- Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 3. Editorial correction of HISTORY 2 (Register 2000, No. 25).

#### § 18702.4. Exceptions.

- (a) Making or participating in making a governmental decision shall not include:
- (1) Actions of public officials which are solely ministerial, secretarial, manual, or clerical;
- (2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined in Title 2, California Code of Regulations, section 18702.4(b)(1); or
- (3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract. In the case of public officials who are "consultants," as defined in Title 2, California Code of Regulations, section 18701(a)(2), this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the agency, so long as they are acting in their private capacity.
- (b) Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:
- (1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:
- (A) An interest in real property which is wholly owned by the official or members of his or her immediate family.
- (B) A business entity wholly owned by the official or members of his or her immediate family.
- (C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.
  - (2) Communicates with the general public or the press.
- (3) Negotiates his or her compensation or the terms and conditions of his or her employment or contract.

- (4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.
- (5) Appears before a design or architectural review committee or similar body of which he or she is a member to present drawings or submissions of an architectural, engineering or similar nature which the official has prepared for a client if the following three criteria are met:
- (A) The review committee's sole function is to review architectural or engineering plans or designs and to make recommendations in that instance concerning those plans or designs to a planning commission or other agency;
- (B) The ordinance or other provision of law requires that the review committee include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and (C) The official is a sole practitioner.
  - (c) Academic Decisions
- (1) Except as provided in subsection (c)(2), neither disclosure of financial interests nor disqualification is required under Government Code sections 87100, 87302, or any Conflict of Interest Code, in connection with:
- (A) Teaching decisions, including the selection by a teacher of books or other educational materials for use within his or her own school or institution, and other decisions incidental to teaching;
- (B) Decisions made by a person who has teaching or research responsibilities at an institution of higher education to pursue personally a course of academic study or research, to apply for funds to finance such a project, to allocate financial and material resources for such academic study or research, and all decisions relating to the manner or methodology with which such study or research will be conducted. Provided, however, that the provisions of this subsection (c)(1)(B) shall not apply with respect to any decision made by the person in the exercise of institution—or campus—wide administrative responsibilities respecting the approval or review of any phase of academic research or study conducted at that institution or campus.
- (2) Disclosure (consistent with 2 Cal. Code Regs. section 18755) shall be required under Government Code section 87302 or any Conflict of Interest Code in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part, by a contract or grant (or other funds earmarked by the donor for a specific research project or for a specific researcher) from a nongovernmental entity, but disqualification may not be required under Government Code sections 87100, 87302 or any Conflict of Interest Code in connection with any such decision if the decision is substantively reviewed by an independent committee established within the institution.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87100, Government Code.

#### HISTORY

- 1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).
- Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 3. Editorial correction of HISTORY 2 (Register 2000, No. 25)
- Amendment of subsection (c)(2) filed 6–14–2005; operative 7–14–2005 (Register 2005, No. 24).

### § 18702.5. Public Identification of a Conflict of Interest for Section 87200 Filers.

(a) Government Code section 87105 and this regulation apply when a public official who holds an office specified in Government Code section 87200 has a financial interest in a decision within the meaning of Government Code section 87100, and the governmental decision relates

- to an agenda item which is noticed for a meeting subject to the provisions of the Bagley–Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.).
- (b) Content & Timing of Identification: The public official shall, following the announcement of the agenda item to be discussed or voted upon but before either the discussion or vote commences, do all of the following:
  - (1) The public official shall publicly identify:
- (A) Each type of economic interest held by the public official which is involved in the decision and gives rise to the conflict of interest (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts), and
  - (B) The following details identifying the economic interest(s):
- (i) if an investment, the name of the business entity in which each investment is held:
- (ii) if a business position, a general description of the business activity in which the business entity is engaged as well as the name of the business entity:
- (iii) if real property, the address or another indication of the location of the property, unless the property is the public official's principal or personal residence, in which case, identification that the property is a residence;
  - (iv) if income or gifts, then identification of the source; and
- (v) if personal financial effect, then identification of the expense, liability, asset or income affected.
- (2) Form of Identification: If the governmental decision is to be made during an open session of a public meeting, the public identification shall be made orally and shall be made part of the official public record.
- (3) Recusal/Leaving the Room: The public official must recuse himself or herself and leave the room after the identification required by subdivisions (b)(1) and (b)(2) of this regulation is made. He or she shall not be counted toward achieving a quorum while the item is discussed.
- (c) Special Rules for Closed Session: If the governmental decision is made during a closed session of a public meeting, the public identification may be made orally during the open session before the body goes into closed session and shall be limited to a declaration that his or her recusal is because of a conflict of interest under Government Code section 87100. The declaration shall be made part of the official public record. The public official shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non–public information regarding the governmental decision.
  - (d) Exceptions:
- (1) Uncontested Matters: The exception from leaving the room granted in Government Code section 87105(a)(3) for a "matter [that] has been placed on the portion of the agenda reserved for uncontested matters" shall mean agenda items on the consent calendar. When the matter in which the public official has a financial interest is on the consent calendar, the public official must comply with subdivisions (b)(1) and (b)(2) of this regulation, and recuse himself or herself from discussing or voting on that matter, but the public official is not required to leave the room during the consent calendar.
- (2) Absence: If the public official is absent when the agenda item subject to subdivision (a) of this regulation is considered, then Government Code section 87105 and this regulation impose no public identification duties on the public official for that item at that meeting.
- (3) Speaking as a Member of the Public Regarding an Applicable Personal Interest: When a personal interest found in 2 Cal. Code Regs. section 18702.4(b) is present, a public official may speak as a member of the general public if he or she complies with subdivisions (b)(1) and (b)(2) of this regulation, recuses himself or herself from voting on the matter and leaves the dais to speak from the same area as the members of the public. He or she may listen to the public discussion of the matter with the members of the public.

COMMENT: Nothing in the provisions of this regulation is intended to cause an agency or public official to make any disclosure that would re-

veal the confidences of a closed session or any other privileged information as contemplated by law including but not limited to the recognized privileges found in 2 Cal. Code Regs. section 18740.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87105 and 87200, Government Code.

#### HISTORY

- 1. New section filed 6–10–2003; operative 6–10–2003 (Register 2003, No. 24). For prior history, see Register 98, No. 48.
- 2. Amendment of subsection (b)(1)(A) filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).

## § 18702.6. Material Financial Effect: Source of Income or Gifts Who Is an Individual Indirectly Involved in the Decision. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

- 1. New section filed 10-17-88; operative 11-16-88 (Register 88, No. 43).
- 2. Repealer filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 3. Editorial correction of HISTORY 2 (Register 2000, No. 25).

#### § 18703. Economic Interests, Defined.

For purposes of Title 2, Division 6, Chapter 7 of the California Code of Regulations, the term "economic interest" includes the interests defined in Title 2, California Code of Regulations, sections 18703.1 through 18703.5, inclusive.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 2–20–76; effective thirtieth day thereafter (Register 76, No. 8)
- 2. Amendment of subsection (d) filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).
- 3. Amendment of initial paragraph only filed 11–13–85; effective thirtieth day thereafter (Register 85, No. 46).
- 4. Repealer and new section filed 11–29–93; operative 12–29–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 49).
- 5. Editorial correction of printing error in subsection (a) (Register 94, No. 25).
- Amendment of subsections (b)-(b)(3) filed 12-5-94; operative 12-5-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 49).
- 7. Editorial correction of subsection (a)(1)(A)(i) (Register 95, No. 50). 8. Amendment filed 3–26–96; operative 3–26–96 pursuant to Government Code
- section 11343.4(d) (Register 96, No. 13).

  9. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 10. Editorial correction of HISTORY 9 (Register 2000, No. 25).

#### § 18703.1. Economic Interest, Defined: Business Entities.

For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in a business entity if any of the following are true:

- (a) The public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more in the business entity.
- (b) The public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity.
- (c) Parent, Subsidiary, Otherwise Related Business Entity. An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code section 87103(a) or (d)
  - (d) Parent, Subsidiary, Otherwise Related Business Entity, defined.
- (1) Parent–subsidiary. A parent–subsidiary relationship exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.
- (2) Otherwise related business entity. Business entities, including corporations, partnerships, joint ventures and any other organizations and enterprises operated for profit, which do not have a parent–subsidiary relationship are otherwise related if any one of the following three tests is met:
- (A) One business entity has a controlling ownership interest in the other business entity.

- (B) There is shared management and control between the entities. In determining whether there is shared management and control, consideration should be given to the following factors:
- (i) The same person or substantially the same person owns and manages the two entities;
  - (ii) There are common or commingled funds or assets;
- (iii) The business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis:
- (iv) There is otherwise a regular and close working relationship between the entities; or
- (C) A controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.
- (e) Although a public official may not have an economic interest in a given business entity pursuant to subdivisions (a)–(c) of this section, the public official may nonetheless have an economic interest in the business entity if it is a source of income to him or her. (See 2 Cal. Code Regs. section 18703.3.)

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 9-12-90; operative 10-12-90 (Register 90, No. 43).
- 2. Amendment filed 3–26–96; operative 3–26–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 13).
- 3. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 5. Editorial correction of HISTORY 3 (Register 2000, No. 25).
- Amendment of subsections (a) and (e) filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7)
- Change without regulatory effect amending subsections (c) and (e) filed 10-6-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 41).
- Amendment of first paragraph and subsection (c) and repealer of subsection (d)(3) filed 3-11-2004; operative 3-11-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

#### § 18703.2. Economic Interest, Defined: Real Property.

(a) For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more in fair market value.

COMMENT: For the statutory definition of "interest in real property," see Government Code section 82033.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–29–93; operative 12–29–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 49).
- Change without regulatory effect amending first paragraph filed 4–11–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 15).
- Change without regulatory effect amending section heading filed 7–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 29).
- 4. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 6. Editorial correction of HISTORY 4 (Register 2000, No. 25).
- Amendment of subsection (a) filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7)
- 8. Amendment of subsection (a) filed 3–11–2004; operative 3–11–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

#### § 18703.3. Economic Interest, Defined: Source of Income.

- (a)(1) For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in any person from whom he or she has received income, including commission income and incentive compensation as defined in this regulation, aggregating five hundred dollars (\$500) within 12 months prior to the time when the relevant governmental decision is made. A public official's income includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income.
- (2) Parent, Subsidiary, Otherwise Related Business Entity. An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has an interest as defined in Government Code section 87103(c). "Parents, subsidiaries, and otherwise related business entities" are defined in 2 Cal. Code Regs. section 18703.1(d).
- (b) Former employers. Source of income, as used in Government Code section 87103(c) and this section, shall not include a former employer if: All income from the employer was received by or accrued to the public official prior to the time he or she became a public official; the income was received in the normal course of the previous employment; and there was no expectation by the public official at the time he or she assumed office of renewed employment with the former employer.
- (c) Sources of Commission Income to Brokers, Agents and Salespersons
- (1) "Commission income" means gross payments received by a public official as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. Commission income is received when it is paid or credited.
- (2) The sources of commission income in a specific sale or similar transaction include for each of the following:
  - (A) An insurance broker or agent:
  - (i) The insurance company providing the policy;
  - (ii) The person purchasing the policy; and
- (iii) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.
  - (B) A real estate broker:
  - (i) The person the broker represents in the transaction;
- (ii) If the broker receives a commission from a transaction conducted by an agent working under the broker's auspices, the person represented by the agent;
- (iii) Any brokerage business entity through which the broker conducts business; and
- (iv) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
  - (C) A real estate agent:
- (i) The broker and brokerage business entity under whose auspices the agent works:
  - (ii) The person the agent represents in the transaction; and
- (iii) Any person who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker.
  - (D) A travel agent or salesperson:
- (i) The airline, hotel, tour operator or other person who provided travel services or accommodations in the transaction;
- (ii) The person who purchases or has a contract for travel services or accommodations through the agent or salesperson; and
- (iii) The person, travel agent, company, travel agency or other business entity for which the agent or salesperson is an agent.
  - (E) A stockbroker:
- (i) The brokerage business entity through which the broker conducts business: and
- (ii) The person who trades the stocks, bonds, securities or other investments through the stockbroker.
  - (F) A retail or wholesale salesperson:

- (i) The person, store or other business entity which provides the salesperson with the product or service to sell and for which the salesperson acts as a representative in the transaction; and
  - (ii) The person who purchases the product or service.
- (3) For purposes of determining whether disqualification is required under the provisions of Government Code sections 87100 and 87103(c), the full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction
- (d) Sources of Incentive Compensation. "Incentive compensation" means income received by an official who is an employee, over and above salary, which is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer which correlates to the conduct of the purchaser in direct response to the effort of the official. Incentive compensation does not include: salary; commission income; bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum; and such executive incentive plans as may be based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company. Incentive compensation also does not include payments for personal services which are not marketing or sales.

The purchaser is a source of income to the official if all three of the following apply:

- (1) The official's employment responsibilities include directing sales or marketing activity toward the purchaser; and
- (2) There is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and
- (3) There is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.

COMMENT: For further discussion of incentive compensation, see *Peninsula Health Care District v. Fair Political Practices Commission*, Sacramento County Superior Court, Case No. 02CS01766, and *In re Hanko*, O–02–088 (August 9, 2002).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–29–93; operative 12–29–93 pursuant to Government Code section 11346.2(d) (Register 93, No. 49).
- Change without regulatory effect amending section heading filed 7–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 29)
- 3. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 4. Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13)
- 5. Editorial correction of HISTORY 3 (Register 2000, No. 25).
- Amendment of subsections (a) and (c)(5)(A) filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).
- Amendment of subsection (a), repealer of subsections (c)(1) and (c)(5)-(c)(5)(B), subsection renumbering, amendment of newly designated subsections (c)(1) and (c)(3) and new subsection (d)-(d)(3) filed 11-10-2003; operative 11-10-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 46).
- Amendment and redesignation of subsection (a) as subsection (a)(1) and new subsection (a)(2) filed 3-11-2004; operative 3-11-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

#### § 18703.4. Economic Interest, Defined: Source of Gifts.

For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating three hundred ninety dollars (\$390) or more in value provided to, re-

ceived by, or promised to the public official within 12 months prior to the time when the decision is made.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8, 87103 and 89503, Government Code.

#### HISTORY

- 1. New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No.
- 3. Amendment filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20). 4. Editorial correction of HISTORY 1 (Register 2000, No. 25)
- 5. Amendment of section filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7). 6. Amendment filed 1–16–2003; operative 1–1–2003. Submitted to OAL for filing
- pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974). Administrative Procedure Act rulemaking requirements) (Register 2003, No.
- 7. Editorial correction of HISTORY 6 (Register 2003, No. 12).
- 8. Amendment filed 3-11-2004; operative 3-11-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).
- 9. Amendment filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).
- 10. Amendment of section and NOTE filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

#### § 18703.5. Economic Interest, Defined: Personal Finances.

For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing. COMMENT: Cross-references: For the definition of "immediate family," see Government Code section 82029. For the definition of "income," see Government Code section 82030 and California Code of Regulations, Title 2, section 18232.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11-21-88; operative 12-21-88 (Register 88, No. 48).
- 2. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 3. Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No.
- 4. Editorial correction of HISTORY 2 (Register 2000, No. 25).
- 5. Amendment of section heading and section filed 1-17-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- Amendment filed 3-11-2004; operative 3-11-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

#### § 18704. Determining Whether an Economic Interest Is Directly or Indirectly Involved in a Governmental Decision.

(a) In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official's economic interest is directly involved or indirectly involved in the governmental decision:

- (1) For governmental decisions which affect business entities, sources of income, and sources of gifts—apply Title 2, California Code of Regulations, section 18704.1;
- (2) For governmental decisions which affect real property interests apply Title 2. California Code of Regulations, section 18704.2.
- (3) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his or her immediate family (personal financial effect)—apply Title 2, California Code of Regulations, section 18704.5.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103(c), Government Code.

#### HISTORY

- 1. New section filed 1–20–76 as an emergency; effective upon filing (Register 76, No. 4).
- 2. Repealer by operation of law, Section 11422.1, Gov. C. (Register 76, No. 25). New section filed 6-17-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 25).
- 4. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 5. Editorial correction of HISTORY 4 (Register 2000, No. 25).

#### § 18704.1. Determining Whether Directly or Indirectly Involved in a Government Decision: Business Entities, Sources of Income, Sources of Gifts.

- (a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:
- (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;
- (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.
- (b) If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(b), section 18705.3(a), or section 18705.4(a), respectively. If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(c), section 18705.3(b), or section 18705.4(b), respectively.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Change without regulatory effect amending section heading and subsection (b) filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 4. Amendment of subsection (b) filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No.

#### § 18704.2. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property.

- (a) Real property in which a public official has an economic interest is directly involved in a governmental decision if any of the following apply:
- (1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. For purposes of subdivision (a)(5), real property is located "within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision" if any

part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

- (2) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting the real property. For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.
- (3) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the real property in which the official has an interest.
- (4) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.
- (5) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.
- (6) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or improved services.
- (b) Notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if:
- (1) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under 2 Cal. Code Regs. section 18705.2(b).
- (2) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.
- (3) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:
- (A) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is an economic interest of the public official, or by a person representing either the public official or an economic interest of the public official.
- (B) The decision requires a further decision or decisions by the public official's agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.
- (C) The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and economic interests of the official are not singled out.
- (D) The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.
- (c) Definitions General Plans. The definitions below apply to this regulation:
- (1) A decision "solely concerns the adoption or amendment of a general plan" when the decision, in the manner described in Government Code sections 65301 and 65301.5, grants approval of, substitutes for, or modifies any component of, a general plan, including elements, a statement

- of development policies, maps, diagrams, and texts, or any other component setting forth objectives, principles, standards, and plan proposals, as described in Government Code sections 65302 and 65303.
- (2) "General plan" means "general plan" as used in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 5, sections 65300, et seq.
- (3) "Specific plan or its equivalent" means a "specific plan" or any equivalent plan adopted by the jurisdiction to meet the purposes described in Government Code, Title 7 (Planning and Zoning), Division I (Local Planning), Article 8, sections 65450, et seq.
  - (d) Determining the applicable materiality standard.
- (1) If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(a).
- (2) If a real property interest is not directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(b).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 3. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 4. Amendment filed 1–16–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- Amendment filed 2–18–2003; operative 2–18–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 8).
- 6. Amendment of subsections (b) and (b)(1), new subsections (b)(3)–(c)(3), subsection relettering and amendment of newly designated subsections (d)(1)–(2) filed 9–9–2004; operative 9–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 37).
- 7. Editorial correction of subsection (b)(3)(A) (Register 2005, No. 38).

### § 18704.3. Sources of Commission Income to Brokers, Agents and Salespersons. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82030, 87103, 87207 and 87302, Government Code.

#### HISTORY

- 1. New section filed 12–21–84; effective thirtieth day thereafter (Register 84, No. 51).
- 2. Editorial correction of subsection (e) (Register 96, No. 43).
- 3. Repealer filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 4. Editorial correction of HISTORY 3 (Register 2000, No. 25).

## § 18704.5. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Economic Interest in Personal Finances.

A public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 3. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- Amendment of section heading and section filed 1-17-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices

Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).

 Amendment repealing subsection (a) designator filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18705. Standards for Determining Whether a Financial Effect on an Economic Interest Is Material.

- (a) In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material:
- (1) For governmental decisions which affect economic interests in business entities—apply 2 Cal. Code Regs. section 18705.1;
- (2) For governmental decisions which affect economic interests in real property—apply 2 Cal. Code Regs. section 18705.2;
- (3) For governmental decisions which affect economic interests in sources of income—apply 2 Cal. Code Regs. section 18705.3;
- (4) For governmental decisions which affect economic interests in sources of gifts—apply 2 Cal. Code Regs. section 18705.4;
- (5) For governmental decisions which affect the personal expenses, income, assets or liabilities of the public official or his immediate family (personal financial effect)—apply 2 Cal. Code Regs. section 18705.5;
- (b) General Rule: Whenever the specific provisions of 2 Cal. Code Regs. sections 18705.1 through 18705.5, inclusive, cannot be applied, the following general rule shall apply: The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or on the source of income, the source of gifts, the business entity, or the real property, which is an economic interest of the official.
- (c) Special Rules. Notwithstanding 2 Cal. Code Regs. sections 18705.1 through 18705.5, inclusive, an official does not have to disqualify himself or herself from a governmental decision if: Although a conflict of interest would otherwise exist under 2 Cal. Code Regs. sections 18705.1 through 18705.5, inclusive, and 18706, the decision will have no financial effect on the person or business entity who appears before the official, or on the real property in which the official holds a direct or indirect interest, or on the personal finances of the official and/or his immediate family.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 1–24–78; effective thirtieth day thereafter (Register 78, No. 4).
- 2. Amendment filed 6–4–82; effective thirtieth day thereafter (Register 82, No. 23).
- 3. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 4. Editorial correction of HISTORY 3 (Register 2000, No. 25).
- 5. New subsection (b)(1) designator, repealer of subsection (c)(1), and subsection renumbering filed 1-17-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- 6. Amendment filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

### § 18705.1. Materiality Standards: Economic Interests in Business Entities.

- (a) Introduction.
- (1) If a business entity in which a public official has an economic interest is directly involved in a governmental decision (see Cal. Code Regs., tit. 2, section 18704.1(a)), use the standards in subdivision (b) of this regulation.
- (2) If a business entity in which a public official has an economic interest is indirectly involved in a governmental decision (see Cal. Code

- Regs., tit. 2, section 18704.1(b)), use the standards in subdivision (c) of this regulation.
  - (b) Directly involved business entities.
- (1) General Rule: Unless the exception in subdivision (b)(2) of this regulation applies, the financial effects of a governmental decision on a business entity which is directly involved in the governmental decision is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity.
- (2) Exception: If the public official's only economic interest in the business entity is an investment interest (see Government Code section 87103(a)), and the public official's investment in the business entity is worth \$25,000 or less, then apply the materiality standards in subdivision (c)(1) of this regulation if the business entity is listed on the Fortune 500, or the materiality standards in subdivision (c)(2) of this regulation if the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had earnings before taxes of no less than:
  - (A) \$2.5 million, or
- (B) such other amount described at Rule 102.01C of the New York Stock Exchange's Listed Company Manual (or any superseding rule of the New York Stock Exchange describing its financial standards for initial listing).
- (c) Indirectly involved business entities. The following materiality standards apply when a business entity in which a public official has an economic interest is indirectly involved in a governmental decision. If more than one of the following subdivisions is applicable to the business entity in question, apply the subdivision with the highest dollar thresholds.
- (1) If the business entity is listed in the Fortune 500, the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
- (A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year of \$10,000,000 or more; or
- (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more; or
- (C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$10,000,000 or more
- (2) If the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had earnings before taxes of no less than \$2.5 million, or such other amount described at Rule 102.01C of the New York Stock Exchange's Listed Company Manual (or any superseding rule of the New York Stock Exchange describing its financial standards for initial listing), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
- (A) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$500,000 or more; or,
- (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$200,000 or more; or,
- (C) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$500,000 or more.
- (3) If the business entity is listed on either the NASDAQ or American Stock Exchange, or if not so listed, for its most recent fiscal year had: net income of no less than \$500,000 (or such other amount described in the minimum financial requirements for continued listing on the NASDAQ SmallCap market), or earnings before taxes of no less than \$750,000 (or such other amount of earnings before taxes described under initial listing standard 1 of Section 101(a) of the Rules of the American Stock Exchange, or any superseding Section of the Rules of that Exchange), the

financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:

- (A) The governmental decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$300,000 or more; or,
- (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more; or,
- (C) The governmental decision will result in an increase or decrease in the value of assets or liabilities of \$300,000 or more.
- (4) If the business entity is not covered by subdivisions (c)(1)–(3), the financial effect of a governmental decision on the business entity is material if it is reasonably foreseeable that:
- (A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more; or,
- (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or,
- (C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more.
- (d) Terminology. The accounting terms described below are the same as, or not inconsistent with, terms used in Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. Nothing in this subdivision should be construed to incorporate new items not contemplated under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards, nor to exclude any items that might be included in the definitions of these terms under Generally Accepted Accounting Principles and Generally Accepted Auditing Standards
- (1) Assets. As used in this section, "assets" means all property, real and personal, tangible and intangible, which belongs to any business entity. This includes, but is not limited to, cash, securities, merchandise, raw materials, finished goods, operating supplies, and ordinary maintenance material and parts, accounts receivable and notes and loans receivable, and prepaid expenses (such as prepaid insurance, interests, rents, taxes, advertising, and operating supplies).
- (A) When a business entity holds a claim over collateral (including real property) as security for a loan made by the business entity, such a claim does not make the collateral (including real property) an "asset" of the business entity, unless the business entity has initiated proceedings to foreclose upon, or acquire the asset based on the debtor's failure to repay the loan. The loan or note secured by the collateral is an asset.
- (B) The definition of "assets" also includes intangible assets. Intangible assets, include, but are not limited to, long-lived legal rights and competitive advantages developed or acquired by a business enterprise, patents, copyrights, franchises, trademarks, organizational costs, goodwill, and secret processes.
- (2) Earnings Before Taxes: Revenue, less the cost of goods sold and selling, general, and administrative expenses (but not excluding depreciation and amortization expenses); otherwise defined as operating and non-operating profit before the deduction of income taxes. Described variously as EBT, Income Before Income Taxes, or Income Before Provision for Income Taxes.
- (3) Expenses: In general, the term refers to the current costs of carrying on an activity.
- (4) Gross Revenue: Actual or expected inflows of cash or other assets. "Gross Revenue" is the revenue of a business entity before adjustments or deductions are made for returns and allowances and the costs of goods sold, and prior to any deduction for these and any other expenses.
- (5) Liabilities: Obligations of the business entity, liquidation of which is reasonably expected to require the transfer of assets or the creation of other new liabilities. Any financial obligation or cash expenditures that must be made by the business entity at a specific time to satisfy the contractual terms of such an obligation.

- (6) Net Income: A business entity's total earnings; otherwise defined as revenues adjusted for the costs of doing business, depreciation, interest, taxes, and other expenses. This amount is usually found at the bottom of a business entity's Profit and Loss statement. Also described as Net Profit
- (e) Financial statements. In complying with this regulation, public officials may rely on the most recent independently audited financial statements of the business entity so long as those statements are reflective of the current condition of the business entity. Financial statements are not considered "reflective of the current condition of the business entity" where:
- (1) The most recent independently audited financial statements of the business entity are for a fiscal year ending more than twenty–four months prior to the date of the governmental decision.
- (2) The most recent audit of the financial statements resulted in an adverse opinion, was issued with a disclaimer, or was otherwise qualified in such a manner that the statement of assets, liabilities, expenses, or gross revenues is questioned in the audit report, or
- (3) There has been a subsequent event, intervening between the date that the financial statement was created and the date of the decision of the public official, that makes the statement no longer representative, including, but not limited to, business reorganizations.

COMMENTS: Electronic access to annual reports, quarterly reports, and other financial statements filed with the United States Securities and Exchange Commission ("SEC") may be obtained by accessing the SEC's website and selecting its EDGAR database of statutory filings: http://www.sec.gov/edgar/searchedgar/companysearch.html.

The earnings before taxes and net income criteria for listing on the New York and American Stock Exchanges, and NASDAQ may be obtained through links from the following webpages:

New York Stock Exchange: http://www.nyse.com/listed/listed.html. American Stock Exchange:

http://wallstreet.cch.com/AmericanStockExchangeAMEX/. NASDAQ:

http://www.nasdaq.com/about/nasdaq\_listing\_req\_fees.pdf.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 3. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 4. Repealer and new section filed 1–18–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- 5. Amendment filed 1–16–2003; operative 1–16–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

### § 18705.2. Materiality Standard: Economic Interests in Real Property.

- (a) Directly involved real property.
- (1) Real property, other than leaseholds. The financial effect of a governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.
- (2) Real property, leaseholds. The financial effect of a governmental decision on the real property in which an official holds a leasehold interest is presumed to be material. This presumption may be rebutted by

proof that it is not reasonably foreseeable that the governmental decision will have any effect on any of the following:

- (A) The termination date of the lease;
- (B) The amount of rent paid by the lessee for the leased real property, either positively or negatively;
- (C) The value of the lessee's right to sublease the real property, either positively or negatively;
- (D) The legally allowable use or the current use of the real property by the lessee; or
  - (E) The use or enjoyment of the leased real property by the lessee.
  - (b) Indirectly involved real property interests.
- (1) Real property, other than leaseholds. The financial effect of a governmental decision on real property which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the real property in which the public official has an interest. Examples of specific circumstances that will be considered include, but are not limited to, circumstances where the decision affects:
- (A) The development potential or income producing potential of the real property in which the official has an economic interest;
- (B) The use of the real property in which the official has an economic interest:
- (C) The character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.
- (2) Real property, leaseholds. The financial effect of a governmental decision on real property in which a public official has a leasehold interest and which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the governmental decision will:
- (A) Change the legally allowable use of the leased real property, and the lessee has a right to sublease the real property;
  - (B) Change the lessee's actual use of the real property;
- (C) Substantially enhance or significantly decrease the lessee's use or enjoyment of the leased real property;
- (D) Increase or decrease the amount of rent for the leased real property by 5+percent during any 12-month period following the decision; or
  - (E) Result in a change in the termination date of the lease.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 3. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 4. Amendment filed 1–16–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3)

### § 18705.3. Materiality Standard: Economic Interests in Persons Who Are Sources of Income.

- (a) Directly involved sources of income. Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material.
  - (b) Indirectly involved sources of income.

- (1) Sources of income which are business entities. If the source of income is a business entity, apply the materiality standards stated in Title 2, California Code of Regulations, section 18705.1(c).
- (2) Sources of income which are non-profit entities, including governmental entities. The effect of a decision is material as to a nonprofit entity which is a source of income to the official if any of the following applies:
- (A) For an entity whose gross annual receipts are \$400,000,000 or more, the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$1,000,000 or more; or
- (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$250,000 or more; or
- (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$1,000,000 or more.
- (B) For an entity whose gross annual receipts are more than \$100,000,000 but less than \$400,000,000, the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$400,000 or more; or
- (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$100,000 or more; or
- (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$400,000 or more.
- (C) For an entity whose gross annual receipts are more than \$10,000,000, but less than or equal to \$100,000,000 the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$200,000 or more.
- (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$50,000 or more.
- (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$200,000 or more.
- (D) For an entity whose gross annual receipts are more than \$1,000,000, but less than or equal to \$10,000,000 the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$100,000 or more.
- (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$25,000 or more.
- (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$100,000 or more.
- (E) For an entity whose gross annual receipts are more than \$100,000 but less than or equal to \$1,000,000 the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$50,000 or more.
- (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$12,500 or more.
- (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$50,000 or more.
- (F) For an entity whose gross annual receipts are \$100,000 or less, the effect of the decision will be any of the following:
- (i) The decision will result in an increase or decrease of the entity's gross annual receipts for a fiscal year in the amount of \$10,000 or more.
- (ii) The decision will cause the entity to incur or avoid additional expenses or to reduce or eliminate existing expenses for a fiscal year in the amount of \$2,500 or more.

- (iii) The decision will result in an increase or decrease in the value of the entity's assets or liabilities in the amount of \$10,000 or more.
- (3) Sources of income who are individuals. The effect of a decision is material as to an individual who is a source of income to an official if any of the following applies:
- (A) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or
- (B) The decision will affect the individual's real property interest in a manner that is considered material under Title 2, California Code of Regulations, sections 18705.2(b).
- (c) Nexus. Any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13)
- 3. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 4. Amendment of subsection (b)(2) filed 1–17–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- Amendment of subsections (b)(1) and (b)(3)(B) filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

### § 18705.4. Materiality Standard: Economic Interests in Persons Who Are Sources of Gifts.

- (a) Directly involved sources of gifts. Any reasonably foreseeable financial effect on a person who is a source of a gift to a public official, and which person is directly involved in a decision before the official's agency, is deemed material.
  - (b) Indirectly involved sources of gifts.
- (1) Sources of gifts which are indirectly involved business entities. If the source of a gift is a business entity, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.1(c).
- (2) Sources of gifts which are indirectly involved nonprofit entities or government agencies. If the source of a gift is a nonprofit entity or a government agency, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.3(b)(2).
- (3) Sources of gifts who are indirectly involved individuals. If the source of a gift is an individual, apply the materiality standards stated in 2 Cal. Code Regs. section 18705.3(b)(3).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 3. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 4. Amendment of subsections (b)(1)–(3) filed 9–12–2002 as a change without regulatory effect. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2002, No. 37).

### § 18705.5. Materiality Standard: Economic Interest in Personal Finances.

- (a) A reasonably foreseeable financial effect on a public official's or his or her immediate family's personal finances is material if it is at least \$250 in any 12—month period. When determining whether a governmental decision has a material financial effect on a public official's economic interest in his or her personal finances, neither a financial effect on the value of real property owned directly or indirectly by the official, nor a financial effect on the gross revenues, expenses, or value of assets and liabilities of a business entity in which the official has a direct or indirect investment interest shall be considered.
- (b) The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family is the only person in the job classification or position. Comment Cross—references: For the definition of "immediate family," see Government Code section 82029.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending section heading filed 3–26–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 3. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 4. Amendment of section heading and section filed 1–17–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
- 5. Amendment of subsection (a) filed 1–16–2002; operative 2–15–2002 (Register 2002, No. 3).
- 6. Amendment of subsection (b) filed 6–21–2005; operative 7–21–2005 (Register 2005, No. 25).
- Amendment of subsection (a) filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law.
   Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

### § 18706. Determining Whether a Material Financial Effect Is Reasonably Foreseeable.

- (a) A material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, §§ 18704, 18705) applicable to that economic interest will be met as a result of the governmental decision.
- (b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:
- (1) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction:
- (2) The market share held by the official or the official's source of income in the jurisdiction;
- (3) The extent to which the official or the official's source of income has competition for business in the jurisdiction;
  - (4) The scope of the governmental decision in question; and

- (5) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.
- (c) Possession of a real estate sales or brokerage license, or any other professional license, without regard to the official's business activity or likely business activity, does not in itself make a material financial effect on the official's economic interest reasonably foreseeable.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

#### HISTORY

- 1. New section filed 8–16–84; effective thirtieth day thereafter (Register 84, No. 33).
- 2. Repealer and new section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 3. Editorial correction of HISTORY 2 (Register 2000, No. 25).
- 4. Designation of first paragraph as subsection (a) and new subsections (b)–(c) filed 1–22–2002; operative 2–21–2002 (Register 2002, No. 4).

#### § 18707. Public Generally.

(a) Introduction.

Notwithstanding a determination that the reasonably foreseeable financial effect of a governmental decision on a public official's economic interests is material, a public official does not have a disqualifying conflict of interest in the governmental decision if the official can establish that the governmental decision will affect the public official's economic interests in a manner which is indistinguishable from the manner in which the decision will affect the public generally as set forth in 2 Cal. Code Regs. sections 18707.1–18707.9.

- (b) Steps to Determine Application of Public Generally. To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth in subdivision (a) of this regulation, apply Steps One through Four:
- (1) Step One: Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.
- (2) Step Two: For each person or real property identified in Step One, determine the applicable "significant segment" rule according to the provisions of 2 Cal. Code Regs. section 18707.1(b).
- (3) Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the applicable "significant segment" rule. If the answer is "no," then the analysis ends because the first prong of a two–part test set forth in 2 Cal. Code Regs. section 18707.1(b) is not met, and the public official cannot participate in the governmental decision. If the answer is "yes," proceed to Step Four.
- (4) Step Four: Following the provisions of 2 Cal. Code Regs. section 18707.1(b)(2), determine if the person or real property identified in Step One is affected by the governmental decision in "substantially the same manner" as other persons or real property in the applicable significant segment. If the answer is "yes" as to each person or real property identified in Step One, then the effect of the decision is not distinguishable from the effect on the public generally and the public official may participate in the decision. If the answer is "no" as to any person or real property identified in Step One, the public official may not participate in the governmental decision unless one of the special rules set forth in 2 Cal. Code Regs. sections 18707.2 through 18707.9 applies to each person or real property triggering the conflict of interest.
- (c) For purposes of Government Code section 87102.5 (Members of the Legislature) and Government Code section 87102.8 (elected state officers), Government Code section 87102.6(b)(2) applies.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 3. Amendment filed 1-16-2001; operative 2-1-2001. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Adminis-

- trative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991); Third District Court of Appeals, 3 Civil C010924 (1992) (Register 2001, No. 3).
- 4. Amendment of subsections (a) and (b)(2)–(4) filed 12–20–2005; operative 1–19–2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 51).

#### § 18707.1. Public Generally. General Rule.

- (a) Except as provided in Government Code sections 87102.6 and 87103.5, the material financial effect of a governmental decision on a public official's economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply.
  - (b) Significant Segments and Indistinguishable Effects.
- (1) Significant Segment. The governmental decision will affect a "significant segment" of the public generally if any of the following are affected as set forth below:
- (A) Individuals. For decisions that affect the personal expenses, income, assets, or liabilities of a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects:
- (i) Ten percent or more of the population in the jurisdiction of the official's agency or the district the official represents; or
  - (ii) 5,000 individuals who are residents of the jurisdiction.
- (B) Real Property. For decisions that affect a public official's interest in real property, the decision also affects:
- (i) Ten percent or more of all property owners or all residential property owners in the jurisdiction of the official's agency or the district the official represents; or
- (ii) 5,000 property owners or residential property owners in the jurisdiction of the official's agency.
- (iii) While the public official must identify ten percent or more of residential property owners or 5,000 residential property owners as provided above, and not residential properties, for purposes of subdivision (b)(1)(B) the official may choose to count each residential property affected as being owned by one property owner if, and only if, the official counts himself or herself as the sole owner of the public official's residential property regardless of his or her actual ownership interest.
- (iv) For purposes of this subdivision, residential property means any real property that contains a single family home, or a multi-family structure of four units or fewer, on a single lot, or a condominium unit.
- (C) Business Entities. For decisions that affect a business entity in which a public official has an economic interest, the decision also affects either 2,000 or twenty–five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.
- (D) Governmental Entities. For decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity.
- (E) Exceptional Circumstances. The decision will affect a segment of the population which does not meet any of the standards in subsections (b)(1)(A) through (b)(1)(D), however, due to exceptional circumstances regarding the decision, it is determined such segment constitutes a significant segment of the public generally.
- (2) Substantially the Same Manner: The governmental decision will financially affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation. The financial effect need not be identical for the official's economic interest to be considered "financially affected" in "substantially the same manner."
- (A) Comparing Financial Effects on Real Property: For a decision that affects a public official's economic interest in his or her real property, fi-

nancial effects are measured in terms of the overall dollar amount of the increase or decrease in the value of the property and not by a percentage increase or decease affecting property values as a whole. Factors to be considered in determining the financial effect on the official's property in comparison with the financial effect on the public generally include, but are not limited to, the following:

- (i) The magnitude of the financial effect of the governmental decision on the official's property as compared with other properties contained within the significant segment;
- (ii) The lot size of the official's property compared with other properties contained within the significant segment (e.g., one acre versus 10 acres);
- (iii) The square footage of the building space of the property compared with the square footage of the building space of other properties contained within the significant segment;
- (iv) The proximity of the official's property to the property that is the subject of the governmental decision compared with the proximity of other properties contained within the significant segment;
- (v) The number of units/parcels owned by the official compared to others in the significant segment;
- (vi) The physical characteristics or permitted use of the property (i.e., historical, commercial, residential) as compared to other properties in the significant segment;
- (vii) The location of the official's property compared with the location of other properties contained within the significant segment;
- (viii) The neighborhood in which the official's property is located is comparable to the neighborhoods in which other properties contained within the significant segment are located;
- (ix) The quality of the structure contained on the official's property compared with the quality of other structures contained on properties within the significant segment;
- (x) The current fair market value of the property as compared to other properties in the significant segment;
- (xi) Improvements made to the official's property as compared with other properties contained within the significant segment;
- (xii) The developmental potential or income producing potential of the real property in which the official has an economic interest compared with other properties contained within the significant segment; and
- (xiii) The character of the effects on the neighborhood of the property in which the official has an economic interest including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood compared with the neighborhoods of other properties contained within the significant segment.

COMMENT: The term "affect all members of the public" as used in subdivision (b)(1)(D) above, is intended to cover decisions affecting the public in general but to exclude decisions that uniquely benefit a public official. NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Renumbering of former section 18707.1 to section 18707.2 and new section 18707.1 filed 1–16–2001; operative 2–1–2001. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991); Third District Court of Appeals, 3 Civil C010924 (1992) (Register 2001, No. 3).
- Amendment of subsections (b)(1)(B), (b)(1)(C) and (b)(2) filed 6-15-2004; operative 6-15-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 25).
- Amendment filed 1–9–2007; operative 2–8–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 2).

### § 18707.2. Special Rule for Rates, Assessments, and Similar Decisions.

The financial effect of a governmental decision on the official's economic interest is indistinguishable from the decision's effect on the public generally if any of the following apply:

- (a) The decision is to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions which are applied on a proportional basis on the official's economic interest and on a significant segment of the jurisdiction, as defined in 2 Cal. Code of Regulations, section 18707.1(b).
- (b) The decision is made by the governing board of a landowner voting district and affects the official's economic interests and ten percent of the landowners or water users subject to the jurisdiction of the district in proportion to their real property interests or by the same percentage or on an "across—the—board" basis for all classes.
- (c) The decision is made by the governing board of a water, irrigation, or similar district to establish or adjust assessments, taxes, fees, charges, or rates or other similar decisions, such as the allocation of services, which are applied on a proportional or "across-the-board" basis on the official's economic interests and ten percent of the property owners or other persons receiving services from the official's agency.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103. Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- Change without regulatory effect amending subsection (a)(2) filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
- 3. Amendment of subsection (a)(5) filed 5–11–99; operative 5–11–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
- 4. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 5. Renumbering of former section 18707.2 to section 18707.3 and renumbering and amendment of former section 18707.1 to section 18707.2 filed 1–16–2001; operative 2–1–2001. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991); Third District Court of Appeals, 3 Civil C010924 (1992) (Register 2001, No. 3).

### § 18707.3. Public Generally — Small Jurisdictions; Principal Residence. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 3. Renumbering of former section 18707.3 to section 18707.7 and renumbering and amendment of former section 18707.2 to section 18707.3 filed 1–16–2001; operative 2–1–2001. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991); Third District Court of Appeals, 3 Civil C010924 (1992) (Register 2001, No. 3).
- 4. Repealer filed 2–25–2003; operative 2–25–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 9).

### § 18707.4. Public Generally: Appointed Members of Boards and Commissions.

- (a) For the purposes of Government Code section 87103, the "public generally" exception applies to appointed members of boards and commissions who are appointed to represent a specific economic interest, as specified in section 87103(a) through (d), if all of the following apply:
- (1) The statute, ordinance, or other provision of law which creates or authorizes the creation of the board or commission contains a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.
- (2) The member is required to have the economic interest the member represents.

- (3) The board's or commission's decision does not have a reasonably foreseeable material financial effect on any other economic interest held by the member, other than the economic interest the member was appointed to represent.
- (4) The decision of the board or commission will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent. For purposes of this regulation, a significant segment constitutes fifty percent of the persons the member was appointed to represent.
- (b) In the absence of an express finding and declaration or requirement of the types described in 2 Cal. Code Regs. section 18707.4(a)(1) and (2), the "public generally" exception only applies if such a finding and declaration or requirement is implicit, taking into account the language of the statute, ordinance, or other provision of law creating or authorizing the creation of the board or commission, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

- New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 3. Amendment of subsections (a)(3)–(b) filed 7–11–2002; operative 8–10–2002 (Register 2002, No. 28).

### § 18707.5. Sources of Income to Owners of Retail Business Entities.

- (a) Significant Segment Test
- (1) For purposes of Government Code section 87103.5(a), as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the retail customers constitute a significant segment of the public generally if either of the following applies:
- (A) The retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction; or
- (B) The retail customers of the business entity during the preceding 12 months number at least 10,000.
- (2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail businesses, the retail customers constitute a significant segment of the public generally if the retail customers of the business entity during the preceding 12 months are sufficient in number to equal 10 percent or more of the population or households of the jurisdiction.
- (3) For purposes of this subdivision, a customer of a retail business entity is each separate and distinct purchaser of goods or services, whether an individual, household, business or other entity. If records are not maintained by customer name, a good faith estimate shall be made to determine what percentage of sales transactions represent multiple transactions by repeat customers. The total number of sales transactions shall then be reduced by the estimated percentage of repeat customers to yield the number of customers for purposes of applying this subdivision.
  - (b) Indistinguishable Income Test
- (1) For purposes of Government Code section 87103.5(a), as to a business entity located in a jurisdiction with a population of more than 10,000 or which is located in a county with more than 350 retail businesses, the amount of income received from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question is less than one—tenth of one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.
- (2) For purposes of Government Code section 87103.5(b), as to a business entity located in a jurisdiction with a population of 10,000 or less

- which is located in a county with 350 or fewer retail businesses, the amount of income received from a retail customer is not distinguishable from the amount of income received from its other retail customers if the amount spent by the customer in question does not exceed one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.
- (c) For purposes of Government Code section 87100, an official who owns 10 percent or more of a retail business entity, whose retail customers meet the criteria in either subdivision (a)(l)(A), (a)(1)(B) or (a)(2), does not "have reason to know" that a decision will affect a source of income to the retail business entity when either of the following applies:
  - (1) If all of the following are true:
- (A) The customer does not have a charge account or open book account with the retail business;
- (B) The retail business does not maintain records for noncharge customer transactions by customer name or other method for tracking transactions which would provide the customer name; and
- (C) The fact that the person is a customer is not personally known to the official: or
  - (2) If all of the following are true:
- (A) The accounts and books of the retail business entity are maintained by someone other than the official or a member of the official's immediate family; and
- (B) The fact that the person is a customer is not personally known to the official.
- (d) For purposes of subdivision (c), a credit card transaction utilizing a credit card not issued by the retail business entity is considered a "non-charge customer transaction."
- (e) Subdivision (c) shall not be utilized in determining whether an official "knows" of a financial interest in a decision within the meaning of Government Code section 87100. When such knowledge exists, or the fact that a person is a source of income is brought to the attention of the official prior to the governmental decision, the provisions of subdivision (c) shall have no effect on the official's duty to disqualify.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87103 and 87103.5, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- 3. Amendment of section and NoTE filed 1–22–2004; operative 1–22–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).

#### § 18707.6. States of Emergency.

Notwithstanding Title 2, California Code of Regulations, sections 18707 through 18707.5, inclusive, the financial effect of a governmental decision on an official is indistinguishable from its financial effect on the public generally if both of the following apply:

- (a) The decision will affect an economic interest of the official, other than an economic interest as defined in section 87103(e), in substantially the same manner as other persons subject to a state of emergency, proclaimed by the Governor pursuant to Government Code section 8625, or proclaimed by the governing body of a city or county.
- (b) The decision is required to mitigate against the effects directly arising out of the emergency, and strict adherence to the Act will prevent, hinder, or delay the mitigation of the effects of the emergency.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Editorial correction of HISTORY 1 (Register 2000, No. 25).

### § 18707.7. Public Generally: Industries, Trades, or Professions.

Where a decision will affect an industry, trade, or profession in substantially the same manner as the decision will affect an official's economic interest, the industry, trade, or profession constitutes a "significant segment" of the jurisdiction only as set forth below:

- (a) In the case of an elected state officer, an industry, trade, or profession constitutes a significant segment of the public generally, as set forth in section 87102.6 of the Government Code.
- (b) In the case of any other official, an industry, trade, or profession constitutes a significant segment of the public generally if that industry, trade, or profession is a predominant industry, trade, or profession in the official's jurisdiction or in the district represented by the official. An industry, trade, or profession that constitutes fifty percent or more of business entities in the jurisdiction of the official's agency or the district the official represents is a "predominant" industry, trade, or profession for purposes of this regulation. For purposes of this subdivision, a not for profit entity other than a governmental entity is treated as a business entity.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

- Renumbering and amendment of former section 18707.3 to section 18707.7 filed 1–16–2001; operative 2–1–2001. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991); Third District Court of Appeals, 3 Civil C010924 (1992) (Register 2001, No. 3)
- 2. Editorial correction of subsection (a) (Register 2001, No. 34).

#### § 18707.9. Public Generally — Residential Properties.

- (a) For purposes of this regulation, the effect of a governmental decision on a public official's real property interests is indistinguishable from the effect on the public generally if 5,000 or ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents are affected by the decision and the official owns three or fewer residential property units. A public official's principal residence does not count as one of these residential property units.
- (b) The effect of a governmental decision on any of a public official's economic interests (including real property and business interests) is indistinguishable from the effect on the public generally if all of the following apply:
- (1) The decision is to establish, eliminate, amend, or otherwise affect the respective rights or liabilities of tenants and owners of residential property pursuant to a resolution, rule, ordinance, or other law of general application;
- (2) No economic interest of the public official other than one created by ownership of residential real property, or the rental of that property, is analyzed under this regulation:
- (3) The official's economic interests are not directly involved in the decision (as provided in 2 Cal. Code Regs. sections 18704.1, 18704.2(a), and 18705.1);
- (4) The decision affects at least ten percent of the residential property units in the jurisdiction of the public official or district he or she represents; and
- (5) The decision will affect the official's economic interests in substantially the same manner as it will affect other residential property owners or owners of residential rental property. A public official will be affected in substantially the same manner for purposes of this subdivision if the decision will be applied on a proportional or "across—the—board" basis on the official's economic interests as on other residential property owners or other owners of residential rental property affected by the decision.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### **HISTORY**

- 1. New section filed 1–16–2001; operative 2–1–2001. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law. Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991); Third District Court of Appeals, 3 Civil C010924 (1992) (Register 2001, No. 3).
- 2. Amendment of subsections (a), (b) and (b)(3) filed 10–11–2005; operative 11–10–2005 (Register 2005, No. 41).

### § 18707.10. Public Generally, Small Jurisdictions; Effects on Official's Domicile.

- (a) The effect of a governmental decision on the residential real property that is the domicile of a public official is not distinguishable from the effect on the public generally if all of the following conditions are met:
- (1) The jurisdiction of the public official's agency has a population of 30.000 or less and covers a geographic area of ten square miles or less;
  - (2) The public official is required to live within the jurisdiction;
- (3) The public official, if elected, has been elected in an at-large jurisdiction:
- (4) The official's property is more than 300 feet from the boundaries of the property that is the subject of the governmental decision;
- (5) The official's property is located on a lot not more than one–quarter acre in size or not larger than 125 percent of the median residential lot size for the jurisdiction; and
- (6) There are at least 20 other properties under separate ownership within a 500 foot radius of the boundaries of the property that is the subject of the governmental decision that are similar in value.
- (b) For purposes of this regulation, "domicile" means the real property upon which the official makes his or her true, fixed, and permanent residence and the place to which he or she has the intention of returning after any absence. A person may have more than one residence but only one domicile. With respect to an ownership interest in any real estate containing the official's domicile where portions of the real estate are designated for separate ownership and portions are designated for common ownership solely by the owners of the separate portions, the official's domicile is the unit, area, or space in which the official has a separate ownership interest.
- (c) Nothing contained in this regulation shall preclude the application of the public generally provisions of regulation 18707.1 or any other regulations not applicable solely to small jurisdictions.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

#### HISTORY

New section filed 12–14–2006; operative 1–13–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 50).

#### § 18708. Legally Required Participation.

- (a) A public official who has a financial interest in a decision may establish that he or she is legally required to make or to participate in the making of a governmental decision within the meaning of Government Code section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.
- (b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall state the existence of the potential conflict as follows:
- (1) The public official shall disclose the existence of the conflict and describe with particularity the nature of the economic interest. "Particularity" as used in this regulation shall be satisfied if the official discloses:
- (A) whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans or gifts;
- (B) if the interest is an investment, the name of the business entity in which each investment is held; if the interest is a business position, a general description of the business activity in which the business entity is engaged; if the interest is real property, the address or another indication of the location of the property, unless the property is the official's principal or personal residence, in which case the official shall disclose this fact. For income, loans or gifts, the official shall disclose the person or entity that is the source.
- (2) The public official or another officer or employee of the agency shall give a summary description of the circumstances under which he or she believes the conflict may arise.

- (3) Either the public official or another officer or employee of the agency shall disclose the legal basis for concluding that there is no alternative source of decision.
- (4) The disclosures required by this regulation shall be made in the following manner:
- (A) If the governmental decision is made during an open session of a public meeting, the disclosures shall be made orally before the decision is made, by either the public official or by another officer or employee of the agency. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or
- (B) If the governmental decision is made during a closed session of a public meeting, the disclosures shall be made orally during the open session either before the body goes into closed session or immediately after the closed session. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or
- (C) If the government decision is made or participated in other than during the open or closed session of a public meeting, the disclosures shall be made in writing and made part of the official public record, either by the public official and/or by another officer or employee of the agency. The writing shall be filed with the public official's appointing authority or supervisor and shall be placed in a public file within 30 days after the public official makes or participates in the decision. Where the public official has no appointing authority or supervisor, the disclosure(s) shall be made in writing and filed with the agency official who maintains the records of the agency's statements of economic interests, or other designated office for the maintenance of such disclosures, within 30 days of the making of or participating in the decision.
  - (c) This regulation shall be construed narrowly, and shall:
- (1) Not be construed to permit an official, who is otherwise disqualified under Government Code section 87100, to vote to break a tie.
- (2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code section 87100, whether or not such other members are actually present at the time of the disqualification.
- (3) Require participation by the smallest number of officials with a conflict that are "legally required" in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an official is selected, he or she is selected for the duration of the proceedings in all related matters until his or her participation is no longer legally required, or the need for invoking the exception no longer exists.
- (d) For purposes of this section, a "quorum" shall constitute the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the "quorum" shall be that minimum number of members needed for that adoption.

COMMENT: Nothing in the provisions of subsection (b)(4)(B) is intended to cause an agency or public official to reveal the confidences of a closed session contemplated by law. For example, under the Brown Act (Government Code sections 54950 et seq.) a city council may enter a closed session to discuss personnel matters and need not publicly disclose the name of the employee who is the subject of the meeting. (Government Code section 54957.) This regulation does not require a city council person who is legally required to participate in that closed session to disclose that employee's name when the council member makes the record required by this regulation.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003 and 87101, Government Code.

#### HISTORY

- 1. New section filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 2. Editorial correction of HISTORY 1 (Register 2000, No. 25).
- Amendment of section and NoTE filed 1–10–2001; operative 2–1–2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
- 4. Amendment of subsections (b)(4)(A)–(B) filed 1–16–2002; operative 2–15–2002 (Register 2002, No. 3).
- 5. Amendment of subsections (a) and (b)(4)(A)–(B) and amendment of COMMENT filed 12–20–2005; operative 1–19–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third District Court of Appeal, unpublished decision, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 51).

#### § 18709. Governmental Decision: Segmentation.

- (a) An agency may segment a decision in which a public official has a financial interest, to allow participation by the official, provided all of the following conditions apply:
- (1) The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
- (2) The decision in which the official has a financial interest is segmented from the other decisions:
- (3) The decision in which the official has a financial interest is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- (4) Once the decision in which the official has a financial interest has been made, the disqualified public official's participation does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.
- (b) For purposes of this regulation, decisions are "inextricably interrelated" when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.
- (c) Budget Decisions and General Plan Adoption or Amendment Decisions Affecting an Entire Jurisdiction: Once all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may participate in the final vote to adopt or reject the agency's budget or to adopt, reject, or amend the general plan.

COMMENT: This regulation implements the segmentation principle outlined in the Commission's opinion *In re Owen* (1976) 2 FPPC Ops. 77. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103, Government Code.

#### HISTORY

1. New section filed 10–2–2003; operative 10–2–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 40).

### § 18720. Other Public Officials Who Manage Public Investments. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82019, 82048 and 87200, Government Code.

#### HISTORY

- 1. New section filed 5-25-94; operative 6-24-94 (Register 94, No. 21).
- 2. Editorial correction of subsection (a)(3) (Register 95, No. 17).
- 3. Repealer of "Comment" filed 4–9–97; operative 4–9–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
- 4. Editorial correction of subsection (a)(2) (Register 98, No. 44).
- 5. Repealer filed 11–23–98; operative 11–23–98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
- 6. Editorial correction of HISTORY 5 (Register 2000, No. 25).

#### Article 2. Disclosure

#### § 18722. Filing Assuming and Leaving Office Statements of Economic Interests; Alternates and Designees.

- (a) For the purposes of Government Code sections 87202 and 87302:
- (1) The date of assuming office is the date that a person either:
- (A) Is authorized to serve in the position, as by being sworn in; or
- (B) Except in the case of an elected official who is required to be sworn into office, begins to perform the duties of the position, as by making, participating in making, or attempting to use his or her official position to influence a governmental decision; whichever occurs earlier.
- (2) For the purposes of Government Code sections 87202(a) and 87302(b), the date that a person is appointed or nominated to an office is the date the appointment or nomination is submitted to the confirming body.
- (b) The date that a person permanently leaves office, for the purposes of Government Code sections 87204 and 87302, is the date that the person is no longer authorized to perform the duties of the office, and stops performing those duties, including making, participating in making, or attempting to use his or her official position to influence any governmental decision. For purposes of this subdivision, a person shall not be deemed to have left office permanently because he or she is on a leave of absence or serves as an intermittent employee. However, a person shall be deemed to have left office permanently if the person merely receives compensation for accrued leave credits.
- (c) Every person who holds an office specified in Government Code sections 87200 or 87302, subdivision (a), as an alternate or as a designee, shall be required to disclose his or her economic interests in the same manner as any other person holding the office.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87202, 87204 and 87302, Government Code.

#### HISTORY

1. New section filed 10–11–2005; operative 11–10–2005 (Register 2005, No. 41). For prior history, see Register 77, No. 14.

### § 18723. Dates for Filing Annual Statements of Economic Interests.

- (a) Each person who holds an office specified in Government Code Section 87200 shall file a Statement of Economic Interests each year in accordance with the schedule set forth in subsection (b) disclosing his or her investments, interests in real property and income during the period since the closing date of his or her last statement filed pursuant to Government Code Sections 87202 or 87203. The statement shall include any investments and interests in real property held at any time during the period covered by the statement, regardless of whether they are still held at the time of filing.
- (b) The closing date for all persons required to file Statements of Economic Interests pursuant to Government Code Section 87203 shall be December 31. The filing deadlines for the Statements are as follows:
- (1) For the Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, members of the Legislature, members of the State Board of Equalization, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, and members elected to the Board of Administration of the Public Employees' Retirement System, the filing deadline shall be March 1.
- (2) For county supervisors, district attorneys, county counsels, county treasurers, county chief administrative officers, county planning commissioners, members of city councils, mayors, city managers, city attorneys, city treasurers, city chief administrative officers and city planning commissioners, the filing deadline shall be April 1.

- (3) For "other public officials who manage public investments" as that term is used in Government Code Section 87200, the filing deadline shall be April 1
- (c) If a person assumes an office specified in Government Code Section 87200 between October 1 and December 31 and files an assuming office Statement of Economic Interests pursuant to Government Code Section 87202, that person need not file an annual Statement of Economic Interests pursuant to Section 87203 until one year later than the date specified in subsection (b).
- (d) If a person leaves an office specified in Government Code Section 87200 between January 1 and the filing deadline for his or her annual Statement of Economic Interests, the leaving office Statement of Economic Interests filed pursuant to Government Code Section 87204 may serve as that person's annual Statement. Prior to the filing deadline for the annual Statement the person shall notify the filing officer in writing that he intends to follow this procedure.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82024, 87200, 87202, 87203 and 87204, Government Code.

#### HISTORY

- 1. New section filed 12–17–76 as an emergency, effective upon filing. Certificate of Compliance included (Register 76, No. 51).
- 2. New subsection (d) filed 4–20–77; effective thirtieth day thereafter (Register 77, No. 17).
- Amendment of section title filed 10–11–78; effective thirtieth day thereafter (Register 78, No. 41).
- 4. Amendment of subsection (b) filed 3–27–80; effective thirtieth day there after (Register 80, No. 13).
- 5. Amendment of subsection (b) filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).
- 6. Amendment of subsection (b)(1) filed 11–13–85; effective thirtieth day thereafter (Register 85, No. 46).
- Editorial correction filed 12–13–85 (Register 85, No. 50). Ed. Note: No change in text
- 8. Amendment filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
- 9. Amendment of subsections (a), (b)(2), (d) and NOTE and new subsection (b)(3) filed 10–14–92; operative 11–13–92 (Register 92, No. 42).
- 10. Amendment of subsection (b)(1) and NOTE filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17).
- Change without regulatory effect amending subsection (b)(1) filed 6-26-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

#### § 18724. Filing of Statements of Economic Interests by Temporary or Part–Time Court Commissioners, Pro Tem and Retired Judges.

- (a) Temporary or part—time court commissioners and pro tem or temporary judges shall file statements of economic interests pursuant to Government Code Sections 87200 et seq., if they serve or expect to serve 30 days or more in any calendar year. Provided, however, that this section shall not excuse these individuals from any filing obligations imposed by a conflict of interest code adopted pursuant to Government Code Sections 87300 et seq.
- (b) Retired judges who serve on assignment pursuant to Article VI, Section 6 of the California Constitution shall file annual statements of economic interests pursuant to Government Code Sections 87200 et seq., for each calendar year in which they serve 30 days or more. Statements filed by retired judges shall cover the period January 1 through December 31 of the calendar year in which 30 days or more were served, and shall be filed no later than March 1 of the following year. Such statements shall be filed with the Fair Political Practices Commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87200, Government Code.

#### HISTORY

- 1. New section filed 11–13–85; effective thirtieth day thereafter (Register 85, No. 46).
- Amendment of section heading, designation and amendment of subsection (a), and new subsection (b) filed 3–14–95; operative 3–14–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).

### § 18725. Anniversary Date for Filing Statements of Economic Interests. [Repealed]

NOTE: Authority cited: Section 83112, Government Code.

#### HISTOR

- 1. New Chapter 7 (Sections 18725 and 18727) filed 9–18–75; effective thirtieth day thereafter (Register 75, No. 38).
- 2. Repealer of Section 18725 filed 5–27–77; effective thirtieth day thereafter (Register 77, No. 22).
- 3. Change without regulatory effect adding NoTE filed 8–31–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 35).

#### § 18726. Valuation of Gifts. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Amendment of subsection (a) filed 5–26–87; operative 6–25–87 (Register 87, No. 26).
- 3. Renumbering and amendment of former section 18726 to section 18946 filed 1–24–94; operative 1–24–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).
- Editorial correction of printing error removing previously relocated language and adding HISTORY 3 (Register 94, No. 9).

## § 18726.1. General Rule for Receipt of Gifts, Promised Gifts and for Return, Donation, or Reimbursement of Gifts. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Renumbering of former section 18726.1 to section 18943 filed 1–26–94; operative 1–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).

### § 18726.2. Valuation of Gifts to an Official and His or Her Family. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Renumbering of former section 18726.2 to section 18944 filed 1–26–94; operative 1–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).

### § 18726.3. Valuation of Gift Passes and Season Tickets. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 6-22-87; operative 6-22-87 (Register 87, No. 26). For travel and lodging, see 2 Cal. Code of Regulations section 18726.
- 2. Renumbering of section 18726.3 to section 18946.1 filed 1–25–93; operative 1–25–93 (Register 93, No. 5).

#### § 18726.4. Testimonial Dinners and Events. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Amendment filed 5-26-87; operative 6-25-87 (Register 87, No. 26).
- 3. Renumbering of section 18726.4 to section 18946.2 filed 1–25–93; operative 1–25–93 (Register 93, No. 5).

#### § 18726.5. Valuation of Wedding Gifts. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Renumbering and amendment of former section 18726.5 to section 18946.3 filed 1-24-94; operative 1-24-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).
- Editorial correction of printing error removing previously relocated language and adding HISTORY 2 (Register 94, No. 9).

### § 18726.6. Reporting of Gifts from Multiple Donors. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Renumbering of section 18726.6 to section 18945.4 filed 1–25–93; operative 1–25–93 (Register 93, No. 5).

### § 18726.7. Passes or Tickets Given to an Agency. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 6–22–87; operative 6–22–87 (Register 87, No. 26). For travel and lodging provided to an official's agency, see Stone Opinion, 3 FPPC Opinions 52 (No. 77–003, June 7, 1977).
- 2. New subsection (e) filed 6-26-90; operative 7-26-90 (Register 90, No. 35).
- 3. Renumbering of former section 18726.7 to new section 18944.1 filed 6–22–94; operative 6–22–94 (Register 94, No. 25).

### § 18726.8. Valuation of Gift Tickets to Charitable and Political Fundraisers. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. New section filed 5-26-87; operative 6-25-87 (Register 87, No. 26).
- 2. Renumbering of section 18726.8 to section 18946.4 filed 1–25–93; operative 1–25–93 (Register 93, No. 5).

#### § 18727. Gifts to Officials: Section 87207(a). [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207(a), Government Code.

#### HISTORY

- 1. Amendment filed 10–11–78; designated effective 1–1–79 (Register 78, No. 41).
- 2. Repealer filed 1-25-93; operative 1-25-93 (Register 93, No. 5).

### § 18727.5. Travel Costs and Other Payments from Campaign Committees.

- (a) Travel costs and reimbursements therefor paid by a "committee" as defined by Government Code Section 82013(a), including a "controlled committee," shall be valued as follows:
- (1) A reimbursement, advance, or other payment for actual travel expenses (including meals and lodging) or for other actual and legitimate campaign expenses made by such a committee or controlled committee is neither income nor a gift to an official and need not be disclosed on the official's or candidate's Statement of Economic Interests if the expenditures are reported by the committee in accordance with the provisions of Government Code Sections 84100, et seq.
- (2) A reimbursement, advance, or other payment for personal travel expenses not covered by subsection (1) shall be reported by the recipient pursuant to Government Code Sections 87207 or 87302.
- (b) Any other payment not covered by subsection (a), including a payment for personal services, such as salary, consulting fees, etc., from a committee is income or a gift (except as provided in Section 18950.3) and reported by the recipient pursuant to Government Code Section 87207 or 87302.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028 and 82030, Government Code.

#### History

- 1. New section filed 1-8-86; effective thirtieth day thereafter (Register 86, No. 2).
- 2. Amendment of subsections (a)(1) and (b) filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

### § 18728. Reporting of Income and Gifts; Honoraria and Awards (87207).

COMMENT: For free admission, food, beverages, transportation, lodging, and subsistence provided to an official, or state candidate in connection with a speech, panel, seminar, or similar service, see California Code of Regulations, Title 2, Section 18950.3.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207, Government Code.

#### HISTORY

- 1. New section filed 10–24–75; effective thirtieth day thereafter (Register 75, No. 43).
- 2. Repealer and new section filed 6–17–76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 25).
- Amendment of subsection (b) filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).

 Repealer and new Comment filed 1–27–93; operative 2–26–93 (Register 93, No. 5).

### § 18728.5. Reporting of Commission Income and Incentive Compensation.

- (a) A public official required to disclose income pursuant to this title must disclose commission income, as defined in 2 Cal. Code Regs. section 18703.3(c)(1), and incentive compensation, as defined in 2 Cal. Code Regs. section 18703.3(d), as described by this regulation.
  - (b) Disclosure of Commission Income.
  - A public official shall report commission income as follows:
- (1) The total amount of commission income received by the official during the period covered by the statement shall be reported if it equals \$500 or more.
- (A) The source of income shall be listed as the official if he or she is self-employed or is reporting as a business entity. For purposes of this subdivision, a public official who receives commission income on a regular basis is a business entity.
- (B) If the official conducts business through a firm or other business entity, the source of income shall be listed as the firm or other business entity.

- (2) If the official reports commission income as a business, in addition to the information reported pursuant to subdivision (b)(1) of this regulation, the name of each source of gross commission income shall be reported if the source provided commission income of \$10,000 or more during the period covered by the statement.
- (3) The full gross value of any commission income for a specific sale or similar transaction shall be attributed to each source of income in that sale or transaction.
  - (c) Disclosure of Incentive Compensation.
- (1) In addition to salary, reimbursement of expenses, and other income received from his or her employer, a public official shall separately report the name of each person who purchased products or services sold, marketed or represented by the public official if the official received incentive compensation of five hundred dollars (\$500) or more attributable to the purchaser during the period covered by the statement.
- (2) If an official's incentive compensation is paid by his or her employer in a lump sum, without allocation of amounts to specific customers, the official shall determine the amount of the incentive compensation attributable to each of the official's customers. This may be based on the volume of sales to or purchases made by those customers and the amount of

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incentive compensation attributable to each customer according to the formula utilized by the official's employer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82030 and 87207, Government Code.

#### HISTORY

1. New section filed 11–10–2003; operative 11–10–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 46).

#### § 18729. Leasehold Interests—Value, Disclosure.

- (a) When an official is required to disclose a leasehold interest as defined in Government Code Section 82033, the official shall:
  - (1) Identify the interest as a leasehold interest.
  - (2) Disclose the number of years remaining on the lease.
  - (3) Provide the address or other precise location of the leased property.
- (4) Provide the date upon which the lease became effective or terminated if either such date occurred during the period covered by the statement.
- (5) Disclose the value of the leasehold interest in the manner required by Government Code Section 87206(d).
- (b) The value of a leasehold interest is the amount of rent owed during a 12-month period. For purposes of disclosure on a Statement of Economic Interests, the value of a leasehold interest is the amount of rent owed during a 12-month period. The 12-month period shall be computed as follows:
- (1) In the case of an annual or leaving office statement, the first day of the 12–month period is the first day of the reporting period or the first day of the lease, which occurs later.
- (2) In the case of an assuming office or candidate's statement, the first day of the 12-month period is the date the statement is due.
- (c) If the value of an official's leasehold interest is less than \$2,000 when the rent owed is computed under subsection (b), but the official knows that the actual fair market value of the leasehold during the 12-month period exceeds \$2,000, the value of the leasehold is the actual fair market value, rather than the rent owed, during the 12-month period. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82033 and 87206, Government Code.

#### HISTORY

- 1. New section filed 1–8–86; effective thirtieth day thereafter (Register 86, No. 2). For history of former section see Registers 85, No. 25 and 76, No. 40.
- Amendment of subsection (c) filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law.
   Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

#### § 18730. Provisions of Conflict of Interest Codes.

- (a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.
- (b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:
  - (1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

- (A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;
- (B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and
  - (C) The filing officer is the same for both agencies. 1

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.<sup>2</sup>

- (5) Section 5. Statements of Economic Interests: Time of Filing.
- (A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.
- (B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.
- (C) Annual Statements. All designated employees shall file statements no later than April 1.
- (D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.
- (5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

- (A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:
  - (1) File a written resignation with the appointing power; and

- (2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.
- (6) Section 6. Contents of and Period Covered by Statements of Economic Interests.
  - (A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

- (C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Government Code section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to 2 Cal. Code Regs. section 18754.
  - (D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property<sup>3</sup> is required to be reported,<sup>4</sup> the statement shall contain the following:

- 1. A statement of the nature of the investment or interest;
- 2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
  - 3. The address or other precise location of the real property;
- 4. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).
- (B) Personal Income Disclosure. When personal income is required to be reported.<sup>5</sup> the statement shall contain:
- 1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
- 2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);
- 3. A description of the consideration, if any, for which the income was received;
- 4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

- 5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.
- (C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported, 6 the statement shall contain:
- 1. The name, address, and a general description of the business activity of the business entity;
- 2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).
- (D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.
- (E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.
  - (8) Section 8. Prohibition on Receipt of Honoraria.
- (A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part—time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

- (8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$390.
- (A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$390 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part–time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

- (8.2) Section 8.2. Loans to Public Officials.
- (A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.
- (B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
- (C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer

has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

- (D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
  - (E) This section shall not apply to the following:
- 1. Loans made to the campaign committee of an elected officer or candidate for elective office.
- 2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent—in—law, brother—in—law, sister—in—law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
- 3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
  - 4. Loans made, or offered in writing, before January 1, 1998.
  - (8.3) Section 8.3. Loan Terms.
- (A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.
  - (B) This section shall not apply to the following types of loans:
  - 1. Loans made to the campaign committee of the elected officer.
- 2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent—in—law, brother—in—law, sister—in—law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
  - 3. Loans made, or offered in writing, before January 1, 1998.
- (C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.
  - (8.4) Section 8.4. Personal Loans.
- (A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:
- 1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
- 2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
  - a. The date the loan was made.
- b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.
- c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

- (B) This section shall not apply to the following types of loans:
- 1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
  - 2. A loan that would otherwise not be a gift as defined in this title.
- 3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
- 4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
- 5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.
- (C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.
  - (9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

- (A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;
- (B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;
- (C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;
- (D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or
- (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$390 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.
  - (9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

- (A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or
- (B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.
  - (10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 and 2 Cal. Code Regs. sections 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

#### (12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000–91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

- <sup>1</sup>Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code section 81004.
- <sup>2</sup> See Government Code section 81010 and 2 Cal. Code of Regs. section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.
- <sup>3</sup> For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.
- <sup>4</sup> Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.
- <sup>5</sup>A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

<sup>6</sup>Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300–87302, 89501, 89502 and 89503, Government Code.

#### HISTORY

- New section filed 4–2–80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.
- 2. Editorial correction (Register 80, No. 29).
- 3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
- 4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
- 5. Amendment of subsection (b)(7)(A) filed 11–10–83; effective thirtieth day thereafter (Register 83, No. 46).
- 6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
- 7. Amendment of subsection (b) filed 10–21–88; operative 11–20–88 (Register 88, No. 46).
- 8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).
- Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of NOTE filed 8–7–92; operative 9–7–92 (Register 92, No. 32)
- 10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)–(A)(2) filed 2–4–93; operative 2–4–93 (Register 93, No. 6).
- 11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11–22–93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9–21–93.
- 12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed

- 1–4–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
- 13. Editorial correction adding HISTORY 11 and 12 and deleting duplicate section number (Register 94, No. 17).
- 14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)–(b)(8.1)(B), (b)(9)(E) and NOTE filed 3–14–95; operative 3–14–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
- 15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
- Amendment of subsections (b)(8)(A)–(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 17. Amendment of subsections (b)(8.1) and (9)(E) filed 4–9–97; operative 4–9–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
- 18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)–(b)(8.4)(C) and amendment of Note filed 8–24–98; operative 8–24–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
- 19. Editorial correction of subsection (a) (Register 98, No. 47).
- 20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5–11–99; operative 5–11–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
- 21. Amendment of subsections (b)(8.1)–(b)(8.1)(A) and (b)(9)(E) filed 12–6–2000; operative 1–1–2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
- 22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
- 23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).
- 24. Amendment of subsections (b)(8.1)–(b)(8.1)(A) filed 1–16–2003; operative 1–1–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).
- 25. Editorial correction of HISTORY 24 (Register 2003, No. 12).
- 26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).
- 27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1)
- 28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).
- 29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12–18–2006; operative 1–1–2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

#### § 18732. Filing Dates for Annual Statements Filed Pursuant to Conflict of Interest Codes (87302).

- (a) When a person assumes office or comes under the coverage of a newly effective conflict of interest code between October 1 and December 31 and files an initial Statement of Economic Interests pursuant to the conflict of interest code, that person need not file an annual Statement of Economic Interests until one year following the date specified in the code if the filing deadline for the annual statement is April 1 or earlier.
- (b) If a person leaves an office subject to a conflict of interest code between January 1 and the filing deadline for his annual Statement of Economic Interests, the leaving office statement may serve as that person's annual statement, provided that prior to the deadline of the annual statement, the person notifies the filing officer in writing of his intention to follow this procedure.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87302, Government Code.

#### HISTORY

- 1. New section filed 12–27–77; effective thirtieth day thereafter (Register 77, No. 53).
- 2. Amendment of subsection (a) filed 6-22-78; effective thirtieth day thereafter (Register 78, No. 25).

### § 18732.5. Statements of Economic Interests from Filers of Abolished Agencies.

- (a) This regulation specifies the manner in which statements of economic interests, required to be filed with abolished agencies or agencies that are designated to be abolished by legislation or order, shall be handled, including filing, processing and retention.
- (b) "Successor agency," for purposes of this regulation, means the agency specified by legislation or order to retain records of the agency that has been, or is designated to be, abolished.
- (c) Statements required to be filed with an agency for which the Commission is the code reviewing body shall be handled as follows:
- (1) At any point over 30 days prior to the abolishment of an agency, statements shall be filed with that agency and may be forwarded to the successor agency, or if no successor agency is specified, to the Commission. Statements filed under this subsection shall be forwarded by the agency upon completion of its filing officer duties, as specified in subdivision (f) of this regulation. The statements shall not be forwarded any earlier than six months prior to abolishment and no later than the date of abolishment.
- (2) Within 30 days prior to, and after, the abolishment of an agency, statements shall be filed with the agency to be abolished, the successor agency, or with the Commission, as determined by the Commission. If filed with the agency to be abolished, the statements shall be forwarded to the successor agency or the Commission, as determined by the Commission, no later than the date of abolishment.
- (d) Statements required to be filed with a local government agency to be abolished and for which the Commission is not the code reviewing body shall be handled as determined by the code reviewing body of the agency to be abolished.
- (e) Original statements filed prior to or following abolishment of the agency for which the Commission is the filing officer pursuant to Government Code section 87500 shall continue to be filed with and retained by the Commission.
- (f) Any agency required to receive statements filed under the provisions of this regulation shall perform all applicable filing officer duties as prescribed in Government Code section 81010 and 2 Cal. Code Regs. section 18115.
- (g) All statements covered by this regulation shall be retained as provided for in subdivision (e) of Government Code section 81009.
- NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 81010, 87200-87350 and 87500, Government Code.

#### HISTORY

1. New section filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

#### § 18733. Disclosure Categories for Auditors, Investigators and Inspectors and Persons Similarly Situated (87302).

- (a) Code reviewing bodies may, in their discretion, approve conflict of interest codes which permit designated employees of the type described in subsection (b) of this regulation to report their financial interests in the manner set forth in subsection (c) of this regulation.
- (b) This regulation is applicable to designated employees who satisfy all of the following criteria:
- (1) The designated employee is not a high level decision or policy maker;
- (2) The designated employee's job functions primarily involve case assignments which are drawn from a large number of persons, business entities or parcels of real property;
- (3) The persons or business entities which are the subject of the designated employee's case assignments are varied in nature and are not selected from a single or limited number of industries, trades or professions;

- (4) The total number of cases assigned to the designated employee during a year constitutes only a small percentage of the total number of persons, business entities or parcels of real property from which the case assignments are drawn.
- (5) The decisions made or participated in by the designated employee generally will affect only the person, business entity or parcel of real property which is the subject of the case assignment and will not create material secondary effects on other persons, business entities or parcels of real property.
- (c) Designated employees described in subsection (b) of this regulation shall disclose the information required by Government Code Sections 87206 and 87207 with respect to any person, business entity or parcel of real property which was the subject of a case assignment during the period covered by the statement.
- (d) This regulation does not relieve any employee from his obligation under Section 87100 and his conflict of interest code to disqualify himself from making, participating in the making, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

COMMENT: This regulation was adopted in order to clarify the disclosure obligations of auditors, investigators and inspectors and others who make or participate in the making of decisions which could foreseeably and materially affect virtually any person, business entity or parcel of real property in the jurisdiction, yet who are not at such a high level so as to justify disclosure of all investments, interests in real property and sources of income. The regulation is expressly inapplicable to persons employed to inspect or investigate the members of a single or limited number of industries, trades or professions.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87302, Government Code.

#### HISTORY

1. New section filed 8-25-78; effective thirtieth day thereafter (Register 78, No. 34).

### § 18735. Change of Position or Disclosure Category Within Same Agency.

- (a) Except as specified otherwise in this regulation, a designated employee who transfers from one designated position to another designated position within the same agency has not assumed or left office within the meaning of Section 87302 or the agency's conflict—of—interest code. The next Statement of Economic Interests the employee files shall disclose both of the following:
- (1) Interests made reportable by the employee's original disclosure category that were held or received at any time during the period from the opening date of the statement to the transfer date.
- (2) Interests made reportable by the employee's new disclosure category that were held or received at any time during the period from the date of the transfer through the closing date of the statement.
- (b) A designated employee who transfers to the position of board member, commissioner, head of an agency, executive director, or other chief executive officer within the same agency and designated in the agency's conflict—of—interest code shall:
- (1) Within 10 days of the transfer, file with the person or agency specified in Section 87500, for the position to which the employee is transferring, an amendment to his or her most recent Statement of Economic Interests providing the following information:
  - (A) The employee's new position or office.
  - (B) The date of the transfer.
- (C) Investments, business positions, and interests in real property held on the date of the transfer, and income received during the 12 months before the date of the transfer, which must be disclosed under the employee's new disclosure category and were not reported on the employee's last Statement of Economic Interests.
- (2) Disclose interests on his or her next Statement of Economic Interests held or received since the employee's last statement as required by subdivisions (a)(1) and (a)(2).
- (c) A designated employee who, at the expiration of his or her term, begins a term in the same position within the same agency within 30 days has not assumed or left office within the meaning of Section 87302 or the

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agency's conflict—of—interest code. The employee shall continue filing annual statements at the time specified in his or her agency's conflict—of—interest code.

- (d) A designated employee has not assumed or left office within the meaning of Section 87302 or the agency's conflict—of—interest code if the employee's agency changes the disclosure category for the employee's position between the filing dates for the designated position. The next Statement of Economic Interests the employee files shall disclose both of the following:
- (1) Interests made reportable by the employee's original disclosure category that were held or received at any time during the period from the opening date of the statement to the date the agency's code was amended.
- (2) Interests made reportable by the employee's new disclosure category that were held or received at any time during the period from the date the agency's code was amended through the closing date of the statement
- (e) A designated employee of the Legislature who holds a position with the same disclosure requirements as a member of the Legislature and who, within 30 days of leaving the position, assumes office in the month of December or January as a member of the Legislature, may file an annual Statement of Economic Interests disclosing investments, business positions, interests in real property, and income held or received during the period since the last statement he or she filed as a designated employee. If filed, this statement serves as both the leaving office statement required under Section 87302(b) and the assuming office statement required under Section 87202(b).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87202(b) and 87302(b), Government Code.

#### HISTORY

- 1. New section filed 6-1-79; effective thirtieth day thereafter (Register 79, No. 22).
- 2. New subsection (c) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
- 3. Amendment of subsection (c) filed 5–26–98; operative 5–26–98. Submitted to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).
- 4. Amendment of section heading, section and NoTE filed 3–24–2008; operative 4–23–2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil CO10924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 13).

# § 18735.5. Filing Dates for Assuming Office, Annual, or Leaving Office Statements of Economic Interests for Multi-Agency Filers of Joint Powers Insurance Agencies.

- (a) An individual who holds a designated position with more than one joint powers insurance agency may elect to file a single multi-agency statement of economic interests pursuant to the filing requirements set forth below in lieu of filing disclosure statements with each agency.
- (1) The multi-agency statement of economic interests shall be filed with the Commission and, in addition, a declaration shall be filed with each agency at which the individual is designated in the conflict of interest code. The declaration shall state that the individual's statement of economic interests is on file with the Commission and available upon request.
- (2) The multi-agency statement of economic interests shall disclose all investments in entities doing business in the state, all interests in real property located within the state, and all income (including loans, gifts and travel payments) received during the applicable time period.
  - (b) Time of Filing and Content of Statements of Economic Interests.
  - (1) Assuming Office Statements of Economic Interest:
- (A) The multi-agency assuming office statement of economic interests shall be filed within 30 days of assuming office with a second joint powers insurance agency. This multi-agency assuming office statement of economic interests will satisfy the reporting requirements for any additional joint powers insurance agency in which the individual serves

- as long as the individual is continuously designated in the conflict of interest code of at least two joint powers insurance agencies.
- (B) The multi-agency assuming office statement of economic interests shall disclose reportable investments and interests in real property held on the date of assuming office, as well as income (including loans, gifts and travel payments) received during the 12 months prior to assuming office.
  - (2) Annual Statements of Economic Interests:
- (A) The multi-agency annual statements of economic interests shall be filed by April 1, each year. A multi-agency annual statement of economic interests may be filed as long as the individual is continuously designated in the conflict of interest code of at least two joint powers insurance agencies.
- (B) The multi-agency annual statement of economic interests shall disclose reportable investments and interests in real property held, and income (including loans, gifts, and travel payments) received during the previous calendar year, provided that the period covered on the first multi-agency annual statement shall begin on the day after the last day of the period reported by the individual in his or her multi-agency assuming office statement of economic interests.
- (C) If an individual assumes office between October 1 and December 31 and files a multi-agency assuming office statement of economic interests pursuant to this section, that individual need not file an annual statement of economic interests until one year later than the date applicable under subdivision (b)(2)(A) above.
  - (3) Leaving Office Statements:
- (A) The multi-agency leaving office statement of economic interests shall be filed within 30 days of leaving office as defined in this subdivision. As used in subdivision (b)(3) of this regulation, the date of "leaving office" for a multi-agency filer is the date the filer is no longer designated in the conflict of interest codes of at least two joint powers insurance agencies. A filer who continues to serve for a single joint powers insurance agency must file statement of economic interests under that agency's conflict of interest code.
- (B) The multi-agency leaving office statement of economic interests shall disclose reportable investments and interests in real property held, and income (including loans, gifts and travel payments) received during the period between the closing date of the last multi-agency statement filed and the date of leaving office.
- (C) If an individual leaves office as defined in subdivision (b)(3)(A) of this regulation between January 1 and the filing deadline for his or her multi-agency annual statement of economic interests, the multi-agency leaving and annual statement of economic interests may be combined as long as the combined multi-agency statement of economic interests is filed within 30 days of leaving office or by April 1, whichever is the earlier due date.
- (c) Multi-agency filers must list in any multi-agency statement of economic interests filed pursuant to this regulation all of the joint powers insurance agencies for which the filer is designated in the conflict of interest code.
- (d) The requirements of this regulation are in addition to any other requirements imposed on designated employees with statewide jurisdiction.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87350 and 87500, Government Code.

#### HISTORY

1. New section filed 10-6-2005; operative 11-5-2005 (Register 2005, No. 40).

#### § 18736. Contents of State Agency Biennial Reports.

- (a) Every state agency for which the Fair Political Practices Commission is the code reviewing body shall, no later than March 1 of each odd-numbered year, submit to the Commission a report which shall state either:
- (1) That the agency has reviewed its conflict of interest code; that the code accurately designates all positions which make or participate in the making of governmental decisions; that the disclosure categories assigned those positions accurately require the disclosure of all invest-

ments, business positions, interests in real property, and sources of income which may foreseeably be affected materially by the decisions made by those designated positions; and that the code includes the provisions required by Government Code Sections 87302, 89502, and 89503; or

- (2) That the agency has reviewed its conflict of interest code, and has determined that amendment is necessary to include new positions which must be designated; to make changes to the reportable sources of income, investments, business positions, or real property; to make changes to the positions assigned; or to change or add the provisions required by Government Code Sections 87302, 89502, and 89503.
- (b) Changed circumstances which require an amendment to a code include, but are not limited to:
- (1) The creation of positions which involve the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest;
- (2) The reclassification, renaming, or deletion of previously designated positions;
- (3) The addition, deletion, or modification of statutorily required provisions of a code;
- (4) The addition, deletion, or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable.
  - (c) This report may be made on a form supplied by the Commission.
- (d) When an agency submits a report pursuant to subdivision (a)(2) stating that amendment to its conflict of interest code is necessary, the agency shall submit the amendment to the Commission within 90 days of the date of the report.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87306, 89502 and 89503, Government Code.

#### HISTORY

- 1. New section filed 2-25-92; operative 3-26-92 (Register 92, No. 13).
- 2. Amendment of subsections (a)(1)–(2) and Note filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18736.1. Contents of Multi–County Local Agency Written Statements.

- (a) Every local government agency with jurisdiction in more than one county shall review its conflict of interest code and, no later than October 1 of each even-numbered year, submit to the Fair Political Practices Commission a written statement which shall state either:
- (1) That the agency has reviewed its conflict of interest code; that the code accurately designates all positions which make or participate in the making of governmental decisions; that the disclosure categories accurately assigned those positions requires the disclosure of all investments, business positions, interests in real property, and sources of income which may foreseeably be affected materially by the decisions made by those designated positions; and that the code includes the provisions required by Government Code Section 87302; or
- (2) That the agency has reviewed its conflict of interest code, and has determined that amendment is necessary to designate all positions which make or participate in the making of governmental decisions, or to update the disclosure categories assigned to require the disclosure of all investments, business positions, interests in real property and sources of income which may foreseeably be affected materially by the designated positions, or to include other provisions required by Government Code Section 87302.
- (b) Changed circumstances which require an amendment of a code include, but are not limited to:
- (1) The creation of positions which involve the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest;
- (2) The reclassification, renaming, or deletion of previously designated positions;

- (3) The addition, deletion, or modification of statutorily required provisions of a code;
- (4) The addition, deletion, or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable.
- (c) This statement shall be signed by the chief executive officer of the agency, or his or her designee, and may be made on a form supplied by the Commission.
- (d) When an agency submits a report pursuant to subdivision (a)(2) stating that amendment to its conflict of interest code is necessary, the agency shall submit the amendment to the Commission within 90 days of the date of the report.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87306.5, Government Code.

#### HISTORY

1. New section filed 2-25-92; operative 3-26-92 (Register 92, No. 13).

### § 18737. Suspension of Code Provisions Pending Appeal (87307).

Whenever a designated employee appeals a provision of his/her agency's Conflict of Interest Code pursuant to Section 87307, the code reviewing body may, in its discretion, suspend or modify the disclosure obligations of the appellant and persons similarly situated pending resolution of the appeal.

COMMENT: Government Code Section 87307 provides that whenever an agency denies a request to amend its Conflict of Interest Code, the person proposing the amendment may appeal the decision to the code reviewing body. This regulation makes it clear that the code reviewing body has the authority to suspend or modify the disclosure obligations of the appellant and persons similarly situated in order to protect their rights to privacy during the pendency of a legitimate appeal. This regulation, however, does not obligate the code reviewing body to suspend or modify the appellant's or any other person's disclosure obligations if the code reviewing body believes that such a suspension or modification would not be in the best interests of the agency and the public.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87307, Government Code.

#### HISTORY

1. New section filed 6–22–78; effective thirtieth day thereafter (Register 78, No. 25).

### § 18740. Privileged Information: Statement of Economic Interests.

An official or candidate need not disclose under Government Code section 87207(b) the name of a person who paid fees or made payments to a business entity if disclosure of the person's name would violate a legally recognized privilege under California law. Such a person's name may be withheld in accordance with the following procedure:

- (a) An official or candidate who believes that a person's name is protected by a legally recognized privilege may decline to report the name, but shall file with his or her Statement of Economic Interests an explanation for such nondisclosure. The explanation shall separately state for each undisclosed person the legal basis for assertion of the privilege and, as specifically as possible without defeating the privilege, facts which demonstrate why the privilege is applicable.
- (b) With respect to each undisclosed person, the official or candidate shall state that to the best of his or her knowledge he or she has not and will not make, participate in making, or in any way attempt to use an official position to influence a governmental decision when to do so constituted or would constitute a violation of Government Code section 87100.
- (c) The Executive Director may request further information from the official or candidate and, if no legal or factual justification sufficient to support assertion of the privilege is shown, may order that the disclosure required by the Act be made. The official or candidate shall, within 14 days after receipt of an order from the Executive Director, either comply with the order or, if he or she wants to challenge the determination of the Executive Director appeal the determination, in writing, to the Commission.

- (d) If the Executive Director determines that nondisclosure is justified because of the existence of a privilege, the matter shall be referred to the Commission.
- (e) The Commission shall review an appeal filed under paragraph (c) or a recommendation made by the Executive Director under paragraph (d) at a meeting held no less than 14 days after notice of the meeting is mailed to the official or candidate, the Attorney General and both the district attorney and the city attorney of the jurisdictions in which the official's or candidate's residence and principal place of business are located. The Commission shall decide whether nondisclosure is warranted by issuing an opinion under Government Code section 83114 and shall treat the explanation for nondisclosure accompanying the official's or candidate's Statement of Economic Interests as an opinion request. The procedures set forth in 2 Cal. Code Regs. sections 18320–18324, however, shall not apply to opinions issued pursuant to this regulation.
- (f) If the Commission orders an official or candidate to disclose, the official or candidate must comply within 14 days. The Executive Director may, for good cause, extend any of the time periods established in this regulation.

COMMENT: A person's name is not ordinarily protected from disclosure by the law of privilege in California. Under current law, for example, a name is protected by the attorney-client privilege only when facts concerning an attorney's representation of an anonymous client are publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability. See, e.g., Brunner v. Superior Court, 51 Cal. 2d 616, 618 (1959); Ex parte McDonough, 170 Cal. 230 (1915); Baird v. Koerner 279 F.2d 623, 630 (9th Cir. 1960); and cases compiled in re Grand Jury Proceedings, 517 F.2d 666, 670–71 (5th Cir. 1975). A patient's name has been protected by the physician-patient privilege only when disclosure of the patient's name would also reveal the nature of the treatment received by the patient because, for example, the physician is recognized as a specialist. See, e.g., Marcus v. Superior Court, 18 Cal. App. 3d 22, 24–25 (1971) and Ascherman v. Superior Court, 254 Cal. App. 2d 506, 515–16 (1967). The names of business customers are not protected by the trade secret privilege unless, because of surrounding circumstances, disclosure of a particular customer's identity would also result in disclosure of special needs and requirements of the customer that are not generally known to competitors. See, e.g., King v. Pacific Vitamin Corp. 256 Cal. App. 2d 841, 846–49 (1967) and Peerless Oakland Laundry Co. v. Hickman, 205 Cal. App. 2d 556, 559-60 (1962)

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87207(b), Government Code.

#### **HISTORY**

- New section filed 7–28–76; effective thirtieth day thereafter (Register 76, No. 31).
   Amendment of subsections (c)–(f) filed 11–2–78; effective thirtieth day thereaf-
- ter (Register 78, No. 44).

  3. Amendment filed 4–28–82; effective thirtieth day thereafter (Register 82, No.
- Amendment filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).
- Amendment of first paragraph, subsection (e) and Note filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 5. Amendment filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).

#### Article 2.5. Post–Employment Laws

### § 18741.1. Permanent Ban. Participating in the Same Proceeding.

- (a) The prohibitions of Government Code sections 87401 and 87402 apply to any state administrative official if all of the following criteria are met:
- (1) The official has permanently left state service or is on a leave of absence.
- (2) The official is compensated, or is promised compensation, for making an appearance or communication, or for aiding, advising, counseling, consulting, or assisting in representing another person, other than the State of California, in a judicial, quasi–judicial or other proceeding. However, a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services are not prohibited or limited by this section.
- (3) The official makes an appearance or communication before any officer or employee of any state administrative agency for the purpose of influencing, as defined in 2 Cal. Code Regs. section 18746.2, a judicial,

- quasi-judicial or other proceeding, including but not limited to any proceeding described in 2 Cal. Code Regs. section 18202, subdivisions (a)(1)-(a)(7).
- (4) The judicial, quasi-judicial or other proceeding includes any proceeding in which the official participated personally and substantially by making, participating in the making, or influencing of a governmental decision, as defined in 2 Cal. Code Regs. sections 18702.1–18702.4, but excluding any proceeding involving the rendering of a legal advisory opinion not involving a specific party or parties. Any supervisor is deemed to have participated in any proceeding that was "pending before," as defined in 2 Cal. Code Regs. section 18438.2, subdivision (b), the official's agency and that was under his or her supervisory authority. For purposes of this regulation, a proceeding is under a supervisor's "supervisory authority" if the supervisor:
- (A) Has duties that include primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted; or
- (B) Has direct supervision of the person performing the investigation, review, or other action involved in the proceeding including, but not limited to, assigning the matter for which the required conduct is taken; or
  - (C) Reviews, discusses, or authorizes any action in the proceeding; or
- (D) Has any contact with any of the participants in the proceeding regarding the subject of the proceeding.

"Supervisory authority" does not include a supervisor, at a higher level within the agency's chain—of—command than the supervisor identified in subsection (a)(4)(A) above, with responsibility for the general oversight of the administrative actions or functions of a program where the responsibilities concerning the specific or final review of the proceeding are expressly delegated to other persons in the agency's structure (i.e. supervisors under subsection (a)(4)(A) above) unless the higher level supervising official has actual involvement in the proceeding as set forth in subsections (a)(4)(C) or (D) of this regulation.

(5) The judicial, quasi-judicial or other proceeding is the same proceeding in which the official participated.

COMMENT: Also see In re Lucas (2000) 14 FPPC Ops. 15.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87401 and 87402, Government Code.

#### HISTORY

- 1. New section filed 2–19–99; operative 2–19–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 8).
- 2. Editorial correction moving section 18741.1 from article 2 to article 2.5 (Register 2001, No. 11).
- 3. Amendment filed 10-6-2005; operative 11-5-2005 (Register 2005, No. 40).

#### § 18746.1. Revolving Door; General Provisions.

- (a) The prohibitions of subdivision (d) of Government Code Section 87406 apply to the following:
- (1) Any member of a state board or commission with "decisionmaking authority," as that term is defined in 2 Cal Code Regs. Section 18701(a)(1);
- (2) Any employee of a state administrative agency who holds a position that is designated or should be designated in the agency's conflict of interest code; and
- (3) Any individual enumerated in Government Code Section 87200 appointed to or employed by a state administrative agency.
- (b) A public official covered by subdivision (a) of this regulation is prohibited from making any appearance or communication if all of the following apply:
- (1) The official has left his or her state office or employment, which means he or she has either permanently left state service or is on a leave of absence.
- (2) The appearance or communication is made within 12 months after leaving state office or employment.
- (3) The public official is compensated, or promised compensation, for the appearance or communication. However, a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not prohibited or limited by this section.

- (4) The appearance or communication is made on behalf of any person as an agent, attorney, or representative of that person. An appearance or communication made by a public official solely to represent his or her personal interests, as defined in 2 Cal. Code Regs. Section 18702.4, subdivision (b)(1), is not prohibited or limited by this section.
- (5) The appearance or communication is made for the purpose of influencing, as defined in 2 Cal. Code Regs. Section 18746.2, any legislative or administrative action, or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.
- (A) Services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement may be excluded from the prohibitions of this regulation, provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings. However, the prohibitions of Government Code Sections 87401 and 87402 may apply.
- (6) The appearance or communication is made before any officer or employee of any of the following:
- (A) Any state administrative agency that the public official worked for or represented during the 12 months before leaving state office or employment. An employee loaned to an agency is deemed to have worked for or represented that agency.
- (B) Any state administrative agency which budget, personnel, and other operations are subject to the direction and control of any agency described in subdivision (b)(6)(A). However, whether an agency is provided technical assistance or legal advice, or is subject to oversight by another agency pursuant to state law, are not factors to be considered in determining whether an agency is subject to the direction and control of another.
- (C) Any state administrative agency subject to the direction and control of the Governor, if the official was a designated employee of the Governor's office during the 12 months before leaving state office or employment
- (c) Subdivisions (b)(2) through (b)(5) of this regulation apply to determine whether an appearance or communication by an elected state officer is prohibited under Government Code Section 87406, subdivisions (b) and (c).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87406, Government Code.

#### **HISTORY**

 New section filed 2–18–99; operative 2–18–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 8).

### § 18746.2. Revolving Door; Appearances and Communications.

- (a) A formal or informal appearance or oral or written communication is for the purpose of influencing if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding. An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding with in writing or by electronic transmission, attending a meeting, and delivering or sending any communication.
- (b) An appearance or communication is not limited by this section when an individual:
- (1) Participates as a panelist or formal speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;
  - (2) Attends a general informational meeting, seminar, or similar event;
  - (3) Requests information concerning any matter of public record; or
  - (4) Communicates with the press.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87401, 87406, 87406.1 and 87406.3, Government Code.

#### HISTORY

- 1. New section filed 2–18–99; operative 2–18–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 8).
- Amendment of subsection (a) and NOTE filed 12–18–2006; operative 1–17–2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court

of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

#### § 18746.3. Revolving Door; Local Officials.

- (a) The prohibitions of Government Code section 87406.3 apply to a public official who, on or after July 1, 2006, holds a position as a:
  - (1) Local elected official;
  - (2) Chief administrative officer of a county;
  - (3) City manager, including the chief administrator of a city; or
- (4) General manager or chief administrator of a special district who holds a position with a local government agency as defined by Government Code section 82041, including the general manager or chief administrator of an air pollution control district or air quality management district.
- (b) A public official covered by subdivision (a) of this regulation is prohibited from making any appearance or communication if all of the following apply:
- (1) The official has permanently left, or is on a leave of office from, that particular office or employment specified in subdivision (a) of this regulation.
- (2) The appearance or communication is made within 12 months after leaving that particular office or employment.
- (3) The public official is compensated, or promised compensation, for the appearance or communication. For purposes of Government Code section 87406.3, a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not considered compensation.
- (4) The appearance or communication is made on behalf of any person as an agent, attorney, or representative of that person. An appearance or communication made by a public official to represent his or her personal interests, as defined in 2 Cal. Code Regs. section 18702.4, subdivision (b)(1), is not prohibited or limited by this section unless the appearance or communication is made in a quasi–judicial proceeding, as defined in subsection (b)(5)(C) of this regulation, in which the official participated while serving as a local government employee or officer.
- (5) The appearance or communication is made for the purpose of influencing, as defined in 2 Cal. Code Regs. section 18746.2, any legislative or administrative action, or any discretionary act involving the issuance, amending, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Notwithstanding Government Code sections 82002 and 82037, for purposes of Government Code section 87406.3, the following definitions apply:
- (A) "Administrative action," as defined in Government Code section 87406.3(d)(1), means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding including a ratemaking proceeding, whether quasilegislative or quasi-judicial. "Administrative action" does not include any action that is solely ministerial.
- (B) "Quasi-legislative" means any proceeding involving the adoption of rules of general applicability, including but not limited to annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or granting of franchises.
- (C) "Quasi-judicial" means any proceeding that determines the rights of specific parties, or applies existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits.
- (D) "Legislative action," as defined in Government Code section 87406.3(d)(2), means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.

- (6) The appearance or communication is made before any officer or employee of any of the following:
- (A) The particular local government agency, including any officer or employee of any committee, subcommittee, or present member of that local government agency, that the public official worked for or represented as specified in subdivision (a) of this regulation. An employee loaned to a local government agency is deemed to have worked for or represented that agency.
- (B) Any local government agency whose budget, personnel, and other operations are subject to the direction and control of any agency described in subsection (b)(6)(A) of this regulation.
- (c) The prohibitions of Government Code section 87406.3 and this regulation do not apply to any individual who, at the time of the appearance or communication, was a board member, officer, or employee of another local government agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87406.3, Government Code.

#### HISTORY

New section filed 3-20-2007; operative 3-20-2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 12).

#### § 18747. Influencing Prospective Employment.

- (a) No public official shall "make," "participate in making," or "use his or her official position to influence" any governmental decision, as defined in 2 Cal. Code Regs., sections 18702.1, 18702.2, 18702.3, 18702.4, if the decision directly relates to a prospective employer.
- (b) A governmental decision "directly relates" to a prospective employer if the public official knows or has reason to know:
- (1) The prospective employer is "directly involved" in the decision, as defined in 2 Cal. Code Regs. section 18704.1(a); or
- (2) It is reasonably foreseeable that the financial effect of a decision on a prospective employer is material as follows:
- (A) For a business entity, the same as set forth in 2 Cal. Code Regs. section 18705.1(c);
- (B) For a nonprofit entity, the same as set forth in 2 Cal. Code Regs. section 18705.3(b)(2); or
- (C) For an individual, the same as set forth in 2 Cal. Code Regs. section 18705.3(b)(3).
- (c) A person is a "prospective employer" of a public official if the official, either personally or through an agent, is "negotiating" or has an "arrangement" concerning prospective employment with that person.
- (1) A public official is "negotiating" employment when he or she interviews or discusses an offer of employment with an employer or his or her agent.
- (2) A public official has an "arrangement" concerning prospective employment when he or she accepts an employer's offer of employment.
- (3) A public official is not "negotiating" or does not have an "arrangement" concerning prospective employment if he or she rejects or is rejected for employment.
- (d) Notwithstanding subdivision (a), the prohibitions of Government Code section 87407 do not apply if:
- (1) The governmental decision will affect the prospective employer in substantially the same manner as it will affect a "significant segment," as set forth in 2 Cal. Code Regs. section 18707.1(b)(1), of the public generally;
- (2) The public official is legally required to make or participate in the making of the governmental decision within the meaning of Government Code section 87101 and 2 Cal. Code Regs. section 18708; or
- (3) The prospective employer is a state, local, or federal governmental agency.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87407, Government Code.

#### HISTORY

- 1. New article 2.5 (section 18747) and section filed 10–28–98; operative 10–28–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 44).
- 2. Change without regulatory effect amending subsections (a), (b)(1), (b)(2)(A)–(C) and (d)(1)–(2) filed 12–15–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 51).
- 3. Change without regulatory effect amending section filed 10–6–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 41).
- 4. Amendment of subsections (a) and (b)(2)(A) filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).

#### Article 3. Conflict of Interest Codes

### § 18750. Procedures for the Promulgation and Adoption of Conflict of Interest Codes for State Agencies.

- (a) Unless otherwise modified, the term "agency" as used in this section shall refer to a state agency other than an agency in the judicial branch of government. The term "Commission" as used in this section shall refer to the Fair Political Practices Commission.
- (b) An agency proposing a conflict of interest code or an amendment to an existing code, other than a nonsubstantive amendment, shall follow the procedures described in this section. An agency proposing a nonsubstantive amendment shall follow the procedures described in 2 Cal. Code of Regs. section 18752.
- (c) Every agency which proposes to adopt a conflict of interest code or to amend its existing code shall:
  - (1) Conduct a public hearing or establish a written comment period.
  - (2) Prepare an initial proposed code or an initial proposed amendment.
- (3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code. This notice shall:
- (A) Describe the proposed code or amendment in general terms and if the proposed action includes amendments to an existing code, include a concise, clear summary of the provisions of the existing code, if any, which will be affected by the proposed amendments, and a summary of how those provisions will be affected by the proposed amendments;
- (B) State that copies of the proposed code or amendment are available to interested persons and indicate where the copies may be obtained;
- (C) Specify the location where written comments concerning the proposed code or amendments may be submitted;
- (D) Specify the date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the agency before it adopts or amends the code;
- (E) State the time and place of any public hearing that is scheduled on the proposed code or amendment;
- (F) State the name and telephone number of an agency officer to whom inquiries concerning the proposed code or amendment may be directed;
- (G) State that the agency has prepared a written explanation of the reasons for the designations and the disclosure responsibilities, or, in the case of an amendment, that the agency has prepared a written explanation of the reasons for the changes and has available all of the information upon which its proposal is based;
- (H) If a code is being adopted, include a reference that the authority for the action is Government Code section 87300. If a code is being amended, include a reference that the authority for the action is Government Code section 87306. For both the adoption of and amendments to codes, provide a reference to Government Code sections 87300–87302 and 87306;
- (I) If a public hearing on the proposed code or amendment is not scheduled, state that any interested person or his or her representative may request, no later than 15 days prior to the close of the written comment period, a public hearing;
- (J) Include a statement that the adoption of the proposed code or amendment will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local

agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons or businesses including small businesses.

- (K) A statement that the adopting agency must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.
- (4) File a copy of the notice with the Office of Administrative Law for publication in the California Notice Register at least 60 days before the public hearing or close of the comment period.
- (5) File a copy of the notice (endorsed by the Office of Administrative Law) with the Commission at least 45 days before the public hearing or close of the written comment period.
- (6) Provide notice pursuant to the requirements of Government Code section 87311, including providing a copy of the notice to each employee of the agency affected by the proposed code or amendment at least 45 days before the hearing or the close of the comment period by serving the employees individually with a copy of the written notice, by posting the notice on employee bulletin boards, or by publishing the notice in an employee newsletter.
- (7) Make the exact terms of the proposed code or amendment available for inspection and copying to interested persons for at least 45 days prior to the public hearing or the close of the comment period.
- (8) Accept written comments from interested persons through the conclusion of the public hearing or the close of the comment period.
- (9) Conduct a public hearing on the proposed code or amendment, if, at least 15 days prior to the close of the written comment period, an interested party, or his or her duly authorized representative, requests a public hearing. The state agency shall to the extent practicable, provide notice of the time, date and place of the hearing by mailing the notice to every person who submitted written comments, or who requested a hearing, on the proposed code or amendment.
- (d) If the procedures set forth in subdivision (c) have been followed, a proposed code or amendment, which has been changed or modified from that which was made available to the public, may, without further notice or hearing, be adopted if:
- (1) The change or modification is nonsubstantial or solely grammatical in nature, or
- (2) The resulting code or amendment is sufficiently related to the text made available to the public that the public was adequately placed on notice that the code or amendment could result from the original proposal and the full text of the resulting code or amendment has been available to the public for at least 15 days prior to the date on which the agency adopts the code or amendment.
- (e) The agency shall submit three copies of the final proposed code or of the existing code with the final proposed amendment in strikeout/underline form to the Commission accompanied by one copy of the following:
  - (1) A code or amendment shall be accompanied by:
- (A) A declaration of the chief executive officer of the agency declaring that the Code specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest and the agency has satisfied the requirements of subdivision (c) preliminary to formulation of the Code;
- (B) A summary of any hearing held by the agency with appropriate identification of any areas of controversy and the manner of their resolution.
- (C) Copies of all written submissions made to the agency regarding the proposed Code or amendment, unless the person making the written submission requests its omission;
- (D) A written explanation of the reasons for the designations and the disclosure responsibilities of officers, employees, members or consultants of the agency. In the case of an amendment, written justification for

any changes including all changes in or additions to the designations or disclosure responsibilities;

- (E) The names and addresses of all persons who participated in any public hearing of the agency on the proposed code or amendment and all persons who requested notice from the agency of the date of the Commission hearing on the adoption of the code or amendment;
  - (F) The most current organizational chart of the agency;
- (G) Job descriptions for all designated employees or employees newly designated by the amendment.
  - (2) A new conflict of interest code shall also be accompanied by:
- (A) A copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency.
  - (B) The identity of the person or body to whom the agency reports;
- (C) A copy of the last annual or regular report prepared by the agency or submitted by the agency to the person or body to whom the agency reports or, if there is no report, copies of recent minutes of agency meetings;
- (D) A brief description of the duties and the terms of all consultants working for the agency who are not designated employees.
- (f) When an agency proposes a new conflict of interest code or an amendment to an existing code, the Executive Director shall either:
- (1) Prepare a notice which specifies the establishment of a written comment period; specifies the date by which comments submitted in writing must be received in order for them to be considered; includes a statement that any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing; includes a clear and concise summary of the proposed action; provides the name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed, and specifies that the text of the proposed code or amendment is available for inspection and copying at the agency and at the Commission offices. This notice shall be sent to the agency and to all persons who have requested notice at least 45 days before the hearing close of the written comment period; or
- (2) Return the proposed code or amendments to the agency with written recommendations for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subdivision (h) of this section.
- (g) If no hearing is requested as set forth above, the Executive Director at the end of the 45–day written comment period shall either:
  - (1) approve the code as submitted; or
- (2) return the proposed code or amendment to the agency for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subdivision (h) of this regulation.
- (h) If a proposed hearing on this matter has been requested, the Commission shall afford any agency or interested person or his or her duly authorized representative, or both, the opportunity to present statements, arguments or contentions in writing on, or prior to, the date of the hearing. Oral testimony shall be encouraged; however, oral statements may be limited at the discretion of the Chairman. The Commission shall consider all relevant matter presented to it prior to and during the public hearing, or appearing on the record of such hearing prior to taking action on the proposed Code or amendments.
  - (i) After a full hearing as provided hereinabove, the Commission shall:
  - (1) Approve the proposed code or amendments as submitted;
- (2) Revise the proposed code or amendments and approve it as revised;
- (3) Direct the Executive Director to return the proposed code or amendments to the agency for revision and resubmission within 60 days.
- (j) If a code or amendment is approved, the Executive Director shall return a copy of the code or amendment to the agency with notification of Commission approval.
- (k) Code or amendments, as approved by the Fair Political Practices Commission, shall be transmitted within 30 days by the agency to the Of-

fice of Administrative Law, which shall file the code or amendment promptly with the Secretary of State without further review pursuant to Article 6 (commencing with section 11349) of Chapter 3.5 of Division 1 of Title 2 of the Government Code. When the agency files the code or amendments with the Office of Administrative Law it shall:

- (1) Indicate that it is transmitting a conflict of interest code approved by the Commission for filing; and
- (2) Request that the Office of Administrative Law publish the code in its entirety, or request that the Office of Administrative Law print an appropriate reference to the agency's code in its title of the California Code of Regulations.
- (I) A conflict of interest code or amendment to a code shall become effective on the thirtieth day after the date of filing with the Secretary of State.
- (m) Each agency's code shall be maintained in the office of the chief executive officer of the agency, who shall make the code available for public inspection and reproduction during regular business hours commencing the effective date of the code. No conditions whatsoever shall be imposed upon persons desiring to inspect the conflict of interest code of the agency, nor shall any information or identification be required from such person. Copies shall be provided at a charge not to exceed ten cents (\$.10) per page.
- (n) The Commission shall maintain copies of each agency's code for public inspection and copying at its offices at 428 J Street, Suite 800, Sacramento, California.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300, 87303 and 87306, Government Code.

#### HISTORY

- 1. New section filed 3–30–76; effective thirtieth day thereafter (Register 76, No. 14)
- 2. Amendment of subsections (l), (m), (n) and (q) filed 7–28–76; effective thirtieth day thereafter (Register 76, No. 31).
- 3. Amendment of subsections (e), (g), (i), (j)(1) and (k) filed 11–2–78; effective thirtieth day thereafter (Register 78, No. 44).
- Amendment of subsections (d) and (l) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
- Amendment filed 1–11–83; effective thirtieth day thereafter (Register 83, No. 3).
- Amendment filed 6–22–83; effective thirtieth day thereafter (Register 83, No. 26).
- 7. Amendment filed 5-18-87; operative 5-18-87 (Register 87, No. 21).
- 8. Amendment of section heading, subsections (c)(3)(J) and (k) and new subsection (c)(3)(K) filed 11–28–88; operative 12–28–88 (Register 88, No. 52).
- Amendment of subsections (b), (c), (k)(2), (m) and NOTE filed 4-21-92; operative 5-21-92 (Register 92, No. 19).
- 10. Amendment of subsections (a), (b), (c)(3)(H), (c)(3)(J), (c)(6), (d), (e)(1)(A), (f)(2), (g)(2) and (k) filed 10–11–2005; operative 11–10–2005 (Register 2005, No. 41).

# § 18750.1. Procedures for the Promulgation and Adoption of Conflict of Interest Codes for Local Government Agencies with Jurisdiction in More Than One County.

- (a) Unless otherwise modified, the term "agency" as used in this section shall refer to a local government agency with jurisdiction in more than one county. The term "Commission" as used in this section shall refer to the Fair Political Practices Commission.
- (b) An agency proposing a conflict of interest code or an amendment to an existing code, other than a nonsubstantive amendment, shall follow the procedures described in this section. An agency proposing a nonsubstantive amendment shall follow the procedures described in 2 Cal. Code of Regs. Section 18752.
- (c) Every agency which proposes to adopt a conflict of interest code or to amend its existing code shall:
  - (1) Conduct a public hearing or establish a written comment period.
  - (2) Prepare an initial proposed code or an initial proposed amendment.
- (3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code. This notice shall:

- (A) Describe the proposed code or amendment in general terms and if the proposed action includes amendments to an existing code, include a concise, clear summary of the provisions of the existing code, if any, which will be affected by the proposed amendments, and a summary of how those provisions will be affected by the proposed amendments;
- (B) State that copies of the proposed code or amendment are available to interested persons and indicate where the copies may be obtained;
- (C) Specify the location where written comments concerning the proposed code or amendments may be submitted;
- (D) Specify the date by which comments submitted in writing relating to the proposed code or amendments must be received in order for them to be considered by the agency before it adopts or amends the code;
- (E) State the time and place of any public hearing that is scheduled on the proposed code or amendment; or if a public hearing on the proposed code or amendment is not scheduled, include a statement that any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing;
- (F) State the name and telephone number of an agency officer to whom inquiries concerning the proposed code or amendment may be directed;
- (G) State that the agency has prepared a written explanation of the reasons for the designations and the disclosure responsibilities, and has available all of the information upon which its proposal is based.
- (4) File a copy of the notice with the Commission at least 45 days before the public hearing or close of the comment period.
- (5) Provide notice pursuant to the requirements of Government Code Section 87311, including providing a copy of the notice to each employee of the agency affected by the proposed code or amendment at least 45 days before the hearing or close of the comment period by serving the employees individually with a copy of the written notice, by posting the notice on employee bulletin boards, or by publishing the notice in an employee newsletter.
- (6) Make the exact terms of the proposed code or amendment available for inspection and copying to interested persons for at least 45 days prior to the public hearing or the close of the comment period.
- (7) Accept written comments from interested persons through the conclusion of the public hearing or the close of the comment period.
- (d) If the procedures set forth in subsection (c) have been followed, a proposed code or amendment, which has been changed or modified from that which was made available to the public, may, without further notice or hearing, be adopted if the code or amendment adopted is substantially similar to the initially proposed code or amendment and all employees affected by the proposed code or amendment as adopted by the agency had adequate notice.
- (e) The agency shall submit three copies of the final proposed code or of the existing code with the final proposed amendment in strikeout/underline form to the Commission accompanied by one copy of the following:
  - (1) For a code or amendment:
- (A) A declaration by the chief executive officer of the agency declaring that the Code specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest and the agency has satisfied the requirements of subsection (c) preliminary to formulation of the Code;
- (B) A summary of any hearing held by the agency with appropriate identification of any areas of controversy and the manner of their resolution.
- (C) Copies of all written submissions made to the agency regarding the proposed Code or amendment, unless the person making the written submission requests its omission;
- (D) A written explanation of the reasons for the designations and the disclosure responsibilities of officers, employees, members or consul-

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tants of the agency. In the case of an amendment, provide a written justification for any changes including all changes in or additions to the designations or disclosure responsibilities;

- (E) The names and addresses of all persons who participated in any public hearing of the agency on the proposed code or amendment and all persons who requested notice from the agency of the date of the Commission hearing on the adoption of the code or amendments;
  - (F) The most current organizational chart of the agency;
- (G) Job descriptions for all designated employees or employees newly designated by the amendment.
  - (2) For a new conflict of interest code:
- (A) A copy of a joint powers agreement or a copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;
- (B) A copy of the last annual or regular report prepared by the agency or submitted by the agency to the person or body to whom the agency reports or, if there is no report, copies of recent minutes of agency meetings;
- (C) A brief description of the duties and the terms of all consultants working for the agency who are not designated employees.
- (f) When an agency proposes a new conflict of interest code or an amendment to an existing code, the Executive Director shall either:
- (1) Prepare a notice which specifies the establishment of a written comment period; includes a statement that any interested person, or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing; specifies the date by which comments submitted in writing must be received in order for them to be considered; includes a clear and concise summary of the proposed action; provides the name and telephone number of the agency officer to whom inquiries concerning the proposed action may be directed and that the text of the proposed code or amendment is available for inspection and copying at the agency and at the Commission offices. This notice shall be sent to the agency and to all persons who have requested notice at least 45 days before the close of the written comment period; or
- (2) Return the proposed code or amendment to the agency with written recommendations for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subsection (h) of this regulation.
- (g) If no hearing is requested as set forth in subsection (f)(1) above, the Executive Director at the end of the 45–day written comment period shall either:
  - (1) Approve the code as submitted; or
- (2) Return the proposed code or amendment to the agency for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subsection (h) of this regulation.
- (h) If a public hearing on this matter has been requested, the Commission shall afford any agency or interested person or his or her duly authorized representative, or both, the opportunity to present statements, arguments or contentions in writing on, or prior to, the date of the hearing. Oral testimony shall be encouraged; however, oral statements may be limited at the discretion of the Chairman. The Commission shall consider all relevant matters presented to it prior to and during the public hearing, or appearing on the record of such hearing prior to taking action on the proposed code or amendment.
- (i) After a full hearing as provided herein above, the Commission shall:
- (1) Approve the proposed code or amendment as submitted and return the code or amendments to the agency;
- Revise the proposed code or amendment and approve it as revised;
- (3) Direct the Executive Director to return the proposed code or amendment to the agency for revision and resubmission within 60 days.
- (j) If a code or amendment is approved, the Executive Director shall return a copy of the code or amendment to the agency with notification of approval.

- (k) A conflict of interest code or amendment to a code shall become effective on the thirtieth day following the approval of the code or amendment.
- (*l*) Each agency's code shall be maintained in the office of the chief executive officer of the agency, who shall make the code available for public inspection and reproduction during regular business hours commencing with the effective date of the code. No conditions whatsoever shall be imposed upon persons desiring to inspect the conflict of interest code of the agency, nor shall any information or identification be required from such person. Copies shall be provided at a charge not to exceed ten cents (\$.10) per page.
- (m) The Commission shall maintain copies of each agency's code for public inspection and copying at its offices in Sacramento, California. Note: Authority cited: Section 83112, Government Code. Reference: Sections 87300, 87303 and 87306, Government Code.

#### HISTORY

- 1. New section filed 5-18-87; operative 5-18-87 (Register 87, No. 21).
- 2. Amendment of subsection (b), new subsection (c) and relettering of following subsections, amendment of new subsections (d), (f)(2), (g), (g)(2), (l) and NOTE filed 4–21–92; operative 5–21–92 (Register 92, No. 19)

# § 18750.2. Procedures for the Promulgation and Adoption of Conflict of Interest Codes for State Agencies Exempt from the Administrative Procedures Act.

- (a) Unless otherwise modified, the term "exempt agency" as used in this section shall refer to any state agency, other than an agency in the judicial branch of government, that is not subject to, or otherwise exempt from, the requirement in Government Code section 11346.4(a)(5) of the Administrative Procedures Act that requires publication of the proposed conflict of interest code in the California Regulatory Notice Register. The term "Commission" as used in this section shall refer to the Fair Political Practices Commission.
- (b) An exempt agency proposing adoption of a conflict of interest code or an amendment to an existing code, other than a nonsubstantive amendment, shall follow the procedures described in this section. An exempt agency proposing a nonsubstantive amendment shall follow the procedures described in 2 Cal. Code of Regs. section 18752(a) through (e).
- (c) Every exempt agency which proposes to adopt a conflict of interest code or to amend its existing code shall:
  - (1) Conduct a public hearing or establish a written comment period.
  - (2) Prepare an initial proposed code or an initial proposed amendment.
- (3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code. This notice shall:
- (A) Describe the proposed code or amendment in general terms and if the proposed action includes amendments to an existing code, include a concise, clear summary of the provisions of the existing code, if any, which will be affected by the proposed amendments, and a summary of how those provisions will be affected by the proposed amendments.
- (B) State that copies of the proposed code or amendment are available to interested persons and indicate where the copies may be obtained.
- (C) Specify the location where written comments concerning the proposed code or amendments may be submitted.
- (D) Specify the date by which comments submitted in writing relating to the proposed code or amendments must be received in order for them to be considered by the exempt agency before it adopts or amends the code.
- (E) State the time and place of any public hearing that is scheduled on the proposed code or amendment; or if a public hearing on the proposed code or amendment is not scheduled, include a statement that any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing.
- (F) State the name and telephone number of an agency officer to whom inquiries concerning the proposed code or amendment may be directed.
- (G) State that the agency has prepared a written explanation of the reasons for the designations and the disclosure responsibilities, or, in the

case of an amendment, that the agency has prepared a written explanation of the reasons for the changes and has available all of the information upon which its proposal is based.

- (H) If a code is being adopted, include a reference that the authority for the action is Government Code section 87300. If a code is being amended, include a reference that the authority for the action is Government Code section 87306. For both the adoption of and amendments to codes, provide a reference to Government Code sections 87300–87302, and 87306.
- (I) If a public hearing on the proposed code or amendment is not scheduled, state that any interested person or his or her representative may request, no later than 15 days prior to the close of the written comment period, a public hearing.
- (4) File a copy of the notice with the Commission at least 45 days before the public hearing or close of the comment period.
- (5) Provide notice pursuant to the requirements of Government Code section 87311, including providing a copy of the notice to each employee of the exempt agency affected by the proposed code or amendment at least 45 days before the hearing or the close of the comment period by serving the employees individually with a copy of the written notice, by posting the notice on employee bulletin boards, or by publishing the notice in an employee newsletter. In addition, notice must be provided by posting the notice on the home page of the agency website.
- (6) Make the exact terms of the proposed code or amendment available for inspection and copying to interested persons for at least 45 days prior to the public hearing or the close of the comment period.
- (7) Accept written comments from interested persons through the conclusion of the public hearing or the close of the comment period.
- (8) Conduct a public hearing on the proposed code or amendment, if, at least 15 days prior to the close of the written comment period, an interested party, or his or her duly authorized representative, requests a public hearing. The agency shall to the extent practicable, provide notice of the time, date and place of the hearing by mailing the notice to every person who submitted written comments, or who requested a hearing, on the proposed code or amendment.
- (d) If the procedures set forth in subdivision (c) of this regulation have been followed, a proposed code or amendment, which has been changed or modified from that which was made available to the public, may, without further notice or hearing, be adopted if:
- (1) The change or modification is nonsubstantial or solely grammatical in nature, or
- (2) The resulting code or amendment is sufficiently related to the text made available to the public, that the public was adequately placed on notice that the code or amendment could result from the original proposal and the full text of the resulting code or amendment has been available to the public for at least 15 days prior to the date on which the agency adopts the code or amendment.
- (e) The exempt agency shall submit three copies of the final proposed code, or of the existing code with the final proposed amendment in strike-out/underline form, to the Commission accompanied by one copy of the following:
  - (1) For a code or amendment, it shall be accompanied by:
- (A) A declaration by the chief executive officer of the exempt agency declaring that the code specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest and the agency has satisfied the requirements of subdivision (c) of this regulation preliminary to formulation of the code;
- (B) A summary of any hearing held by the agency with appropriate identification of any areas of controversy and the manner of their resolution;
- (C) Copies of all written submissions made to the agency regarding the proposed code or amendment, unless the person making the written submission requests its omission;
- (D) A written explanation of the reasons for the designations and the disclosure responsibilities of officers, employees, members or consul-

- tants of the agency. In the case of an amendment, provide a written justification for any changes including all changes in or additions to the designations or disclosure responsibilities;
- (E) The names and addresses of all persons who participated in any public hearing of the agency on the proposed code or amendment and all persons who requested notice from the agency of the date of the Commission hearing on the adoption of the code or amendments;
  - (F) The most current organizational chart of the agency; and
- (G) Job descriptions for all designated employees or employees newly designated by the amendment.
  - (2) If a new conflict of interest code, it shall also be accompanied by:
- (A) A copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;
  - (B) The identity of the person or body to whom the agency reports;
- (C) A copy of the last annual or regular report prepared by the agency or submitted by the agency to the person or body to whom the agency reports or, if there is no report, copies of recent minutes of agency meetings; and
- (D) A brief description of the duties and the terms of all consultants working for the agency who are not designated employees.
- (f) When an agency proposes a new conflict of interest code or an amendment to an existing code, the Executive Director of the Commission shall either:
- (1) Prepare a notice which specifies the establishment of a written comment period; includes a statement that any interested person, or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing; specifies the date by which comments submitted in writing must be received in order for them to be considered; includes a clear and concise summary of the proposed action; provides the name and telephone number of the agency officer to whom inquiries concerning the proposed action may be directed and that the text of the proposed code or amendment is available for inspection and copying at the agency and at the Commission offices. This notice shall be sent to the agency and to all persons who have requested notice at least 45 days before the close of the written comment period; or
- (2) Return the proposed code or amendment to the agency with written recommendations for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subdivision (h) of this regulation.
- (g) If no hearing is requested as set forth in subsection (f)(1) above, the Executive Director at the end of the 45–day written comment period shall either:
  - (1) Approve the code as submitted; or
- (2) Return the proposed code or amendment to the agency for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subdivision (h) of this regulation.
- (h) If a public hearing on this matter has been requested, the Commission shall afford any agency or interested person or his or her duly authorized representative, or both, the opportunity to present statements, arguments or contentions in writing on, or prior to, the date of the hearing. Oral testimony shall be encouraged; however, oral statements may be limited at the discretion of the Chairman. The Commission shall consider all relevant matters presented to it prior to and during the public hearing, or appearing on the record of such hearing prior to taking action on the proposed code or amendment.
- (i) After a full hearing as provided herein above, the Commission shall:
- (1) Approve the proposed code or amendment as submitted and return the code or amendment to the agency;
- (2) Revise the proposed code or amendment and approve it as revised;
- (3) Direct the Executive Director to return the proposed code or amendment to the agency for revision and resubmission within 60 days.

- (j) If a code or amendment is approved, the Executive Director shall return a copy of the code or amendment to the agency with notification of approval.
- (k) A conflict of interest code or amendment to a code shall become effective on the thirtieth day following the approval of the code or amendment.
- (*l*) Each agency's code shall be maintained in the office of the chief executive officer of the agency, who shall make the code available for public inspection and reproduction during regular business hours commencing the effective date of the code. No conditions whatsoever shall be imposed upon persons desiring to inspect the conflict of interest code of the agency, nor shall any information or identification be required from such person. Copies shall be provided at a charge not to exceed ten cents (\$.10) per page.
- (m) The Commission shall maintain copies of each agency's code for public inspection and copying at its offices in Sacramento, California. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300, 87303 and 87306, Government Code.

#### HISTORY

1. New section filed 6-14-2005; operative 7-14-2005 (Register 2005, No. 24).

# § 18751. Procedure and Standards for Obtaining Exemption from Government Code Section 87300, Requiring Adoption and Promulgation of a Conflict of Interest Code.

- (a) This section sets forth the procedure and standards by which the Fair Political Practices Commission will determine whether to grant an exemption from Government Code section 87300 to an agency for which the Commission is the code reviewing body. Other code reviewing bodies are encouraged to adopt the same or similar procedure and standards. Nothing in this section shall be construed to mean that a government agency is not required to adopt a conflict of interest code if it has not been granted an exemption.
- (b) A governmental body qualifying as an agency, and therefore required to adopt and promulgate a Conflict of Interest Code pursuant to Government Code section 87300, or be included within another agency's Conflict of Interest Code, may submit a request to the Fair Political Practices Commission for exemption from that requirement if the Commission would be the agency's code reviewing body. Obtaining an exemption as provided in this regulation is the exclusive means by which an agency may obtain an exemption from the requirement to adopt and promulgate a Conflict of Interest Code. The term "agency" as used in this section means any state agency or local government agency with jurisdiction in more than one county.
- (c) An exemption shall be granted to an agency by the Executive Director only if he or she finds:
- (1) That if the agency were to adopt a Conflict of Interest Code, there would be no "designated employees," within the meaning of Government Code Sections 82019 and 87302(a), subject to its provisions; or
- (2) That the agency is, or within one year will be, inoperative and nonfunctioning; or
- (3) That the agency is a committee, board, or commission that does not possess decisionmaking authority as defined in 2 Cal. Code Regs. section 18701(a)(1), and both of the following apply:
- (A) The agency will not acquire real property in the foreseeable future; and  $% \left( 1\right) =\left( 1\right) \left( 1$
- (B) The annual operating budget exclusive of salaries for the agency is less than \$150,000; or
- (4) That good cause exists for granting an exemption due to extraordinary circumstances that indicate the burden on the agency of adopting a conflict of interest code is not warranted by the degree of likelihood that a conflict of interest may occur.
- (d) An exemption may be granted to an agency or extended by the Executive Director on his or her own initiative or in response to a request by the agency. A request by an agency shall be signed by the chief executive officer or a legal representative of the agency and shall be accompanied by a statement of the alleged basis for a grant of exemption with sup-

- porting documentation, as described in subdivisions (e) through (g) of this regulation.
- (e) A request for exemption under subdivision (c)(1) shall be accompanied by:
- (1) A list of every position in the agency, including each officer, employee, member and consultant with the agency;
- (2) A copy of the job description for each position listed in subsection (1) above;
- (3) A copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;
  - (4) Identification of the person or body to whom the agency reports;
- (5) A copy of the last annual or regular report submitted by the agency to the person or body to whom the agency reports;
- (6) A detailed justification of the request for exemption including an explanation of why none of the positions listed in subsection (1) above, are designated employees. In preparing this justification, particular note should be taken of Government Code section 82019.
- (f) A request for exemption under subdivision (c)(2) shall be accompanied by:
- (1) A copy of the statutory or legal authority under which the agency ceased, or soon will cease, to operate or function;
  - (2) The date, time and place of the last meeting of the agency;
- (3) Identification of the positions and names of any staff who continue to work for or represent the agency, whether salaried or unsalaried; and
- (4) A detailed explanation of the reasons the agency is, or soon will be, inoperative and nonfunctioning.
- (g) A request for exemption under subdivision (c)(3) shall be accompanied by:
- (1) A copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;
- (2) Identification of the person or body to whom the agency reports;
- (3) A copy of the last annual or regular report submitted by the agency to the person or body to whom the agency reports;
- (h) Within 90 days after receiving a request for exemption, the Executive Director shall:
  - (1) Approve the request;
  - (2) Deny the request; or
- (3) Return the request for additional information and resubmission within 60 days. Upon resubmission, the Commission shall, within 60 days, either approve the request for exemption or deny the request.
- (i) In the case of a newly created agency, the time limits prescribed by Government Code sections 87302.6 and 87303 for the members of a board or commission to file statements of economic interests, and for the agency to submit a proposed Conflict of Interest Code, shall be tolled while a request for exemption is under initial consideration by the Executive Director or reconsideration by the Commission, provided the request is submitted prior to the time limit expiring.
- (j) When an exemption is granted, the Executive Director shall issue an exemption letter and transmit it to the requesting agency. The exemption letter shall state a legal and factual basis for the granting of an exemption. When an exemption is granted under subdivision (c)(4), the letter shall also describe the particular extraordinary circumstances that warrant the granting of an exemption under that subdivision. A copy of the exemption letter shall be transmitted to any person requesting it, and shall be posted on the Commission's website. Within 30 days after the exemption is granted, any interested party may submit a request that the grant of exemption be reconsidered by the Commission. The Chairman shall consider the request and, if in his or her discretion good cause exists for reconsideration, he or she shall schedule the matter for hearing before the Commission.
- (k) When a request for exemption is denied, the Executive Director shall issue a letter denying the request for exemption, transmit it to the requesting agency, and establish a new deadline by which the agency re-

questing the exemption shall submit a proposed Conflict of Interest Code to the Commission, or be included within the Conflict of Interest Code of another agency. If the request is from a newly created agency having a board or commission whose members are subject to the filing requirements imposed by Government Code section 87302.6, the letter denying the request for exemption shall also establish a new deadline, not exceeding 30 days from the date the letter is issued, by which the board or commission members shall file statements of economic interests pursuant to Government Code section 87200. A copy of the letter denying the exemption shall be transmitted to any person requesting it, and shall be posted on the Commission's website. Within 30 days after the request for exemption is denied, any interested party may submit a request that the denial be reconsidered by the Commission. The Chairman shall consider the request and, if in his or her discretion good cause exists for reconsideration, he or she shall schedule the matter for hearing before the Commission.

- (*l*) An exemption granted under subdivision (c)(3) of this regulation does not constitute formal written advice or informal assistance pursuant to 2 Cal. Code Regs. sections 18329 and 18329.5 concerning the duty of an individual to file a statement of economic interests under the provisions of an existing Conflict of Interest Code.
- (m) Upon being issued, an exemption shall remain in effect until the basis for the grant of exemption no longer exists or the expiration of 2 years, whichever occurs earlier. When an agency's exemption expires without being renewed on the Executive Director's own initiative, the agency shall either adopt and promulgate a Conflict of Interest Code pursuant to Government Code section 87300, submit a request for the exemption to be extended, or submit a new request for exemption.
- (n) A request to extend an exemption need only consist of a declaration signed by the chief executive officer or a legal representative of the agency stating that the circumstances that served as the basis for the original grant of exemption have not changed. The request shall then be granted or denied according to the procedures set forth in subdivisions (h) through (k) of this regulation, and if granted, subject to the provisions of subdivision (l) of this regulation, just as an original exemption.

NOTE: Authority cited: Sections 83108 and 83112, Government Code. Reference: Section 87300 et seq., Government Code.

#### HISTORY

- 1. New section filed 7–28–76; effective thirtieth day thereafter (Register 76, No. 31).
- 2. Amendment filed 3–3–86; effective thirtieth day thereafter (Register 86, No. 10).
- 3. Amendment of subsections (c), (e), repealer of former subsection (h) and relettering, and amendment of new subsections (h)–(j), repealer of subsection (*l*) and amendment of Note filed 4–21–92; operative 5–21–92 (Register 92, No. 19).
- 4. Amendment of subsection (g) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- Amendment of section heading and section filed 12–29–2005; operative 1–28–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992. (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements.) (Register 2005, No. 52).

### § 18752. Nonsubstantive Amendments of Conflict of Interest Codes.

- (a) A state agency or a local government agency with jurisdiction in more than one county may make nonsubstantive alterations of a conflict of interest code for its agency.
- (b) No alteration of a conflict of interest code shall be deemed nonsubstantive until the agency has requested and received prior written approval from the Executive Director of the Fair Political Practices Commission, or his or her designee, to classify the alteration as nonsubstantive.
- (c) Each request for a nonsubstantive alteration shall be in writing and shall be accompanied by:
- (1) The conflict of interest code for the agency showing the proposed nonsubstantive amendments in strikeout/underscore format;
  - (2) A brief description of the proposed amendments; and

- (3) A declaration by the chief executive officer of the agency declaring that the code specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest.
- (d) The Executive Director, or his or her designee, shall respond in writing to each request for interim approval within 30 calendar days or receipt.
- (e) Nonsubstantive alterations of conflict of interest codes shall be limited to the following:
- (1) The reclassification or renaming of previously designated positions, provided no designated positions are created, and provided no existing disclosure responsibilities are modified;
- (2) The deletion of a position for which the classification has been abolished by the agency;
- (3) The addition, deletion or modification of definitional or operational provisions of a conflict of interest code in conformity to a statutory amendment, a regulation of the Fair Political Practices Commission, a decision of the California Supreme Court, or a final decision of a California Court of Appeal; or
- (4) The modification of any provision of a conflict of interest code, provided no disclosure or disqualification obligation of any designated employee is disturbed thereby.
- (f) Nonsubstantive amendments to a state agency conflict of interest code which have been approved by the Executive Director or his or her designee shall be transmitted within 30 days by the agency to the Office of Administrative Law for filing with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Division 1 of Title 2 of the Government Code. When the agency files the nonsubstantive amendments with the Office of Administrative Law, it shall:
- (1) Indicate that it is transmitting a conflict of interest code approved by the Fair Political Practices Commission for filing; and
- (2) Request that the Office of Administrative Law publish the code in its entirety, or request that the Office of Administrative Law print an appropriate reference to the agency's code in its title of the California Code of Regulations.
- (g) The nonsubstantive amendments to the conflict of interest code shall become effective on the thirtieth day after approval by the Executive Director or his or her designee or in the case of a state agency, the thirtieth day after the date of filing with the Secretary of State.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87306, Government Code.

#### HISTORY

- 1. New section filed 6-3-77; effective thirtieth day thereafter (Register 77, No. 23).
- 2. Amendment of subsection (a) filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).
- 3. Amendment filed 1–11–83; effective thirtieth day thereafter (Register 83, No. 3).
- 4. Amendment filed 4–21–92; operative 5–21–92 (Register 92, No. 19).
- 5. Editorial correction of subsection (f)(2) (Register 95, No. 40).

#### § 18753. Statements of Economic Interests; Where to File.

City and county treasurers and "other public officials who manage public investments" as that term is used in Government Code Section 87200, who are required to file statements of economic interests pursuant to Title 9, Chapter 7, Article 2 of the Government Code shall file those statements as follows:

- (a) County treasurers and other county public officials who manage public investments for the county shall file one original with the county clerk who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer.
- (b) City treasurers and other city officials who manage public investments for the city shall file one original with the city clerk who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer.

- (c) Except as otherwise provided in Government Code Section 87500, state officials who manage public investments for a state agency shall file one original with the filing officer for the agency who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer.
- (d) Except as provided in subdivisions (a) and (b) of this section, members of local government agencies, boards, or commissions who manage public investments on behalf of their agency shall file one original with the filing officer of the local agency, board, or commission who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer. At its discretion, the Fair Political Practices Commission may provide that the original be filed directly with the local government agency, board, or commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87200 and 87500, Government Code.

#### HISTORY

1. New section filed 10-14-92; operative 11-13-92 (Register 92, No. 42).

## § 18754. Statements of Economic Interests (Members of Boards or Commissions of Newly Created Agencies); When and Where to File.

- (a) Applicability:
- (1) Pursuant to Government Code section 87302.6, a member of a governing board or commission of a newly created agency shall disclose his or her economic interests pursuant to Government Code sections 87202 through 87210. This requirement applies until such time as the member is included in an approved conflict of interest code in effect for the governing board or commission of which he or she is a member.
- (2) For purposes of Government Code section 87302.6, "newly created agency" means any state agency or local government agency, as defined in Government Code sections 82003, 82041, and 82049, which has come into existence on or after January 1, 2003.
- (3) A member of a governing board or commission of a newly created agency is not subject to this regulation if subsection (A), (B), (C) or (D) of subdivision (a)(3) of this regulation applies:
- (A) The member also holds a position specified in Government Code section 87200 and the geographical jurisdiction of the newly created agency is the same as or is wholly included within the jurisdiction in which the member must report his or her economic interests pursuant to article 2 of chapter 7 of this title, Government Code sections 87200 et seq.
- (B) The member is also designated in a conflict of interest code for another agency and all of the following apply:
- (i) The geographical jurisdiction of the newly created agency is the same as or is wholly included within the jurisdiction of the other agency;
- (ii) The disclosure assigned to the member in the code of the other agency is the same as that required under article 2 of chapter 7 of this title, Government Code sections 87200 et seq.; and
  - (iii) The filing officer is the same for both agencies.
- (C) The newly created agency was formed as a result of the merger of two or more agencies and all of the following apply:
- (i) The member served on the governing board or commission of an agency abolished in the merger in substantially the same capacity as the member will serve on the governing board or commission of the newly created agency;
- (ii) The geographical jurisdiction of the newly created agency is the same as the jurisdiction of the abolished agency; and
- (iii) The member was previously subject to the same disclosure as required for persons listed in Government Code section 87200.
- (D) The board or commission does not possess decisionmaking authority as defined in 2 Cal. Code Regs. section 18701(a)(1).
  - (b) When to file:
  - (1) Assuming Office Statements of Economic Interests:
- (A) Every member of a governing board or commission of a newly created agency that has come into existence on or after January 1, 2003, but prior to the effective date of this regulation, shall file an assuming office statement within 30 days from the effective date of this regulation.

- (B) Except as provided in subdivision (b)(1)(A) above, every member of a governing board or commission of a newly created agency shall file an assuming office statement not more than 30 days after assuming office or, if his or her nomination or appointment is subject to State Senate confirmation, not more than 10 days after being nominated or appointed to office.
  - (2) Annual Statements of Economic Interests:
- (A) Every member of a governing board or commission of a newly created agency shall, no later than April 1 of each year, file an annual statement.
- (B) Every person who assumes office as a member of a governing board or commission of a newly created agency between October 1 and December 31 and files an assuming office statement pursuant to this section need not file his or her first annual statement until one year later than the date applicable under subsection (b)(2)(A), above.
  - (3) Leaving Office:
- (A) Every person who leaves his or her position as a member of a governing board or commission of a newly created agency shall, within 30 days after leaving office, file a leaving office statement.
- (B) If a person leaves his or her position as a member of a governing board or commission of a newly created agency between January 1 and the filing deadline for his or her annual statement of economic interests, the person's leaving office statement may serve as his or her annual statement if, prior to the filing deadline for the annual statement, the person notifies the filing officer in writing that he or she intends to follow this procedure.
- (4) Members Beginning and Completing a Term of Office: A member of a governing board or commission of a newly created agency who completes a term of office under this regulation and, within 30 days thereafter, begins a term of the same office or another such office of the same jurisdiction, is not deemed to assume office or leave office for purposes of filing statements under this regulation.
- (c) Where to file: Pursuant to subdivision (o) of Government Code section 87500 and 2 Cal. Code Regs. section 18730, subdivision (b)(4), members of governing boards or commissions of newly created agencies shall file the statements required under this regulation with their newly created agency or with the agency's code reviewing body, as provided by that code reviewing body.
- (d) Effect Upon Initial Statement Required Under Government Code section 87302(b): An assuming office statement or annual statement filed under this section by a member of a governing board or commission of a newly created agency is deemed to satisfy the requirement at Government Code section 87302(b) that an initial statement be filed by that member within 30 days after the effective date of the new conflict of interest code applicable to that member.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300–87302.6, Government Code.

#### HISTORY

- 1. New section filed 3–27–2003; operative 3–27–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2003, No. 13).
- 2. Amendment of subsection (a)(3)(B) filed 10–26–2004; operative 11–25–2004 (Register 2004, No. 44).
- Amendment of section and NoTE filed 9–27–2006; operative 10–27–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 39).

#### § 18755. Statements of Economic Interests: Person or Persons at an Institution of Higher Education with Principal Responsibility for a Research Project.

(a) Disclosure shall be required under Government Code section 87302 or any conflict of interest code in connection with a decision made by a person or persons at an institution of higher education with principal

responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part by:

- (1) A contract or grant from a nongovernmental entity sponsor, or
- (2) Other funds from a nongovernmental entity earmarked by the donor for a specific research project or for a specific researcher.
  - (b) Types of Statements of Economic Interests.
- (1) *Initial Statement:* The initial statement must be submitted to the university filing officer for the statements of economic interests before final acceptance of a contract, grant, or gift. The statement shall include reportable investments in and positions with the sponsor as of the date of the offer of funding, and income and gifts received from the sponsor within the 12 months prior to the date of the offer.
- (2) Interim Statements: A statement must be filed within 30 days after funding is renewed and shall disclose reportable investments, income and business positions held or received during the period between the date the initial statement was filed and the date the funding for the project was renewed.
- (c) Content: The disclosure statement shall contain the name and address of the sponsor, a general description of the sponsor's business activity, if any, and the amount of funding.
- (1) Business Positions with Sponsor. When the principal investigator is a director, officer, partner, trustee, employee, or holds any position of management with the sponsor, the disclosure statement shall contain the title of any position held in the entity by the principal investigator.
- (2) Investments and Equity Interest in the Sponsor. When the principal investigator holds an investment or equity (ownership) interest in the sponsor, the disclosure statement shall contain a statement of the fair market value of the investment or interest and whether the value of the investment or interest is \$2,000 but does not exceed \$10,000, exceeds \$10,000 but does not exceed \$100,000, exceeds \$100,000 but does not exceed \$1,000,000; or greater than \$1,000,000.
- (3) *Income from the Sponsor*. When the principal investigator has received reportable income from the sponsor, the disclosure statement shall contain:
- (A) A statement whether the aggregate value of income from the sponsor, or in the case of a loan, the highest amount owed to the sponsor, was \$500 but does not exceed 1,000, exceeds \$1,000 but does not exceed \$10,000, exceeds \$10,000, or greater than \$100,000.
- (B) In the case of a loan, the annual interest rate and whether the loan was secured or unsecured.
- (4) Gifts from the Sponsor. In the case of a gift of \$50 or more from the sponsor, the disclosure statement shall contain:
  - (A) A description of the gift;
  - (B) The amount or value of the gift; and
  - (C) The date the gift was received.
- (5) Payments for Travel from the Sponsor. In the case where a payment for travel was received from the sponsor, the disclosure statement shall contain:
- (A) A description of the nature of the payment and whether it is a gift or income;
  - (B) The amount of the payment; and
  - (C) The dates the travel occurred.
- (d)(1) Disclosure shall not be required under Government Code section 87302 (or under a conflict of interest code) in connection with a decision made by a principal investigator to undertake such research, if the nongovernmental entity funding or supporting the research is one of the following:

Alzheimer's Disease & Related Disorders Association
American Academy of Dermatology
American Academy of Pediatrics
American Association for the Advancement of Science
American Association for State & Local History
American Association of Colleges of Pharmacy
American Association of Obstetricians & Gynecologists

American Association of Retired Persons American Cancer Society American Chemical Society American College of Obstetricians & Gynecologists American College of Radiology American Committee for the Weizmann Institute of Science American Council of Learned Societies American Diabetes Association American Foundation for Pharmaceutical Education American Fund for Dental Education, Inc. American Gastroenterologic Association American Health Assistance Foundation American Heart Association American Kidney Fund American Library Association American Liver Foundation American Lung Association American Lupus Society, The American Nurses Foundation American Parkinson Disease Association American Philological Association American Philosophical Society

American Red Cross Amyotrophic Lateral Sclerosis Society of America Arthritis Foundation Asthma & Allergy Foundation of America

Bush Foundation, The

California Association for Neurologically Handicapped Children
California Division of the American Cancer Society
California Heart Association

California Lung Association
Cargill Foundation
Carnegie Corporation of New York

Carnegie Foundation for the Advancement of Teaching

Cerebral Palsy Foundation Chicago Community Trust, The Childs Memorial Fund, The Jane Coffin

Christian Children's Fund

Clark Foundation, The Edna McConnell Columbia Foundation Commonwealth Fund, The

> Cooley's Anemia Foundation Council on Library Resources

Culpeper Foundation, Inc., Charles E.

Ilpeper Foundation, Inc., Charles E. Cystic Fibrosis Foundation

Deafness Research Foundation, The Donner Foundation, William H. Dover Fund, Inc.

Dreyfus Foundation, Inc., The Camille & Henry Dreyfus Foundation, The Max & Victoria Dysautonomia Foundation

Earhart Foundation
Easter Seal Research Foundation
Epilepsy Foundation of America
Eye Research Institute of Retina Foundation

Fight for Sight Ford Foundation, The Foundation for Child Development Fuller Fund, The Anna

German Marshall Fund of the U.S.
Giannini Foundation
Grant Foundation, The William T.
Guggenheim Foundation, H.F.
Guggenheim Memorial Foundation, John Simon

Haas Fund, The Walter & Elise Hartford Foundation, John A. Haynes Foundation, The John Randolf & Dora Hearst Foundation, William R. Hewlett Foundation, The William & Flora

Institute for Educational Affairs
International Research & Exchanges Board

Japan Foundation

Johnson Foundation, The Robert Wood

Juvenile Diabetes Foundation

Kade Foundation, Inc., The Max
Kaiser Family Foundation, The Henry J.
Keck Foundation, William M.
Kellogg Foundation, W.K.
Klingenstein Fund, The Esther & Joseph
Knights Templar Eye Foundation
Kresge Foundation, The
Kunstadter Family Foundation, The Albert

Leakey Foundation, The L.S.B.
Leukemia Society
Levi Strauss Foundation
Lilly Endowment, Inc.
Luce Foundation, Inc., The Henry
Lupus Foundation of America

MacArthur Foundation, John D. & Catherine T.
McKnight Foundation, The
March of Dimes
Markle Foundation, The John & Mary R.
Mellon Foundation, The Andrew W.
Mott Foundation, Charles Stewart
Muscular Dystrophy Association
Myasthenia Gravis Foundation

National Academy of Sciences National Collegiate Athletic Association National Council of Teachers of English National Foundation for Ileitis & Colitis National Foundation for Infectious Diseases National Fund for Medical Education National Geographic Society National Head Injury Foundation National Hemophilia Foundation National Kidney Foundation National Leukemia Association National Migraine Foundation National Multiple Sclerosis Society National Research Council National Retinitis Pigmentosa Foundation National Society to Prevent Blindness National Sudden Infant Death Syndrome Foundation National Tuberous Sclerosis Association Northern California Society to Prevent Blindness Noves Foundation, Inc., Jessie Smith

Organization for Tropical Studies

Packard Foundation, The David & Lucille
Paralyzed Veterans of America
Pardee Foundation, Elsa U.
Peierls Foundation, Inc., The
Picker Foundation, James
Population Council
Presiding Bishop's Fund for World Relief
Project HOPE

Research Corporation
Research to Prevent Blindness
Resources for the Future, Inc.
Retirement Research Foundation
Richardson Foundation, Smith
Rippel Foundation, Fannie E.
Rockefeller Brothers Fund
Rockefeller Foundation
Rosenberg Foundation
Rubin Foundation, Inc., Samuel
Runyon–Walter Winchell Cancer Fund, Damon

Sage Foundation. Russell
San Francisco Foundation
Scaife Foundation, Inc., Sara
Schiff Foundation
Scottish Rite Schizophrenia Research Program
Sherman Foundation, Nate H.
Skaggs Foundation, L.J. & Mary C.
Skin Cancer Foundation
Sloan Foundation, Alfred P.
Social Science Research Council
Spencer Foundation, The

Teagle Foundation Tinker Foundation, Inc., The Treadwell Foundation, Nora Eccles

United Cerebral Palsy
United Scleroderma Research Foundation
U.S. Olympic Committee

Webb Foundation, Del E. Weingart Foundation

Wenner-Gren Foundation for Anthropological Research, Inc.
Whitehall Foundation
Whitney Foundation, the Helen Hay
Wood Charitable Trust, W.P.

Wood Charitable Trust, W.P.
Woods Hole Oceanographic Institution

Zellerbach Family Fund

(d)(2) An entity shall be considered a qualified nonprofit entity under this section based on the following factors:

- (A) The nonprofit organization has been in existence for an extended period of time;
- (B) The nonprofit organization does not receive major funding, nor is it tied to, a corporate source;
  - (C) The nonprofit organization has a national reputation; and
- (D) The nonprofit organization serves, or funds research in, a broad geographic area.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87300, 87303 and 87306, Government Code.

HISTORY

1. New section filed 6-14-2005; operative 7-14-2005 (Register 2005, No. 24).

### § 18760. Conflict of Interest Codes Affected by Health Department Reorganization. [Repealed]

NOTE: Authority cited: Section 83112, Government Code.

HISTORY

- 1. New section filed 6-22-78 as an emergency; effective upon filing (Register 78, No. 25).
- 2. Certificate of Compliance filed 8-25-78 (Register 78, No. 34).
- 3. Repealer filed 4–28–82; effective thirtieth day thereafter (Register 82, No. 18).

#### Chapter 9. Incumbency

#### § 18901. Mass Mailings Sent at Public Expense.

- (a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of the following criteria are met:
- (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For

purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

- (2) The item sent either:
- (A) Features an elected officer affiliated with the agency which produces or sends the mailing, or
- (B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.
- (3)(A) Any of the costs of distribution is paid for with public moneys; or
- (B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.
- (4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).
- (b) Notwithstanding subdivision (a), mass mailing of the following items is not prohibited by section 89001:
- (1) Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted in this subdivision (b)(1) or elsewhere in this regulation.
  - (2) A press release sent to members of the media.
- (3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.
- (4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.
- (5) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer except as specifically permitted in this subdivision (b)(5) or elsewhere in this regulation.
- (6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.
- (7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to such a notice or other item.
- (8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color. Such item may not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted in this subdivision (b)(8) or elsewhere in this regulation.

- (9)(A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.
- 1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.
- 2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.
- (B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this regulation.
- (10) An agenda or other writing that is required to be made available pursuant to sections 11125.1 and 54957.5 of the Government Code, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.
- (11) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.
- (c) The following definitions shall govern the interpretation of this regulation:
- (1) "Elected officer affiliated with the agency" means an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency, or who appoints one or more members of the agency.
- (2) "Features an elected officer" means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.
  - (3) "Substantially similar" is defined as follows:
- (A) Two items are "substantially similar" if any of the following applies:
- 1. The items are identical, except for changes necessary to identify the recipient and his or her address.
- 2. The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.
  - 3. Both of the following apply to the items mailed:
- a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.
- b. Most of the information contained in one item is contained in the other.
- (B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are "substantially similar." Such informational materials may not include the elected officer's name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this regulation.
  - (4) "Unsolicited request" is defined as follows:
- (A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his or her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.
- (B) An unsolicited request for continuing information on a subject shall be considered an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.

(C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, his or her name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

"The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so."

Inclusion of a similar notice in other items shall not constitute a solicitation under this regulation.

- (D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to his or her issuance of a press release, shall be considered an unsolicited request.
- (E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82041.5 and 89001, Government Code.

#### HISTORY

- 1. New section filed 10–18–77; effective thirtieth day thereafter (Register 77, No. 43). For prior history, see Register 77, No. 14.
- 2. Amendment filed 10–29–81; effective thirtieth day thereafter (Register 81, No. 44).
- 3. Editorial correction of subsection (d)(5) (Register 82, No. 17).
- 4. Amendment filed 1–26–83; effective thirtieth day thereafter (Register 83, No. 5).
- Amendment filed 8–8–88 as an emergency; operative 8–8–88 (Register 88, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12–6–88.
- 6. Reinstatement of section as it existed prior to 8–8–88 emergency amendment by operation of Government Code Section 11346.1(f) (Register 88, No. 52).
- 7. Amendment filed 12–9–88 as an emergency readoption of amendment originally filed 8–8–88; operative 12–9–88 (Register 88, No. 52). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4–8–89.
- Certificate of Compliance including repealer of Section 18901 and new Section 18901 transmitted to OAL 2–9–89 and filed 3–13–89; operative 4–12–89 (Register 89, No. 11).
- Repealer and new section filed 6–29–90; operative 7–29–90 (Register 90, No. 35).
- 10. Editorial correction of HISTORY 1 (Register 95, No. 21).
- Editorial correction inserting previously deleted HISTORY NOTES 1–8 and renumbering remaining HISTORY NOTES (Register 95, No. 25).
- 12. Editorial correction of subsection (c)(3)(A)1. (Register 95, No. 30).

# § 18902. Declaration of Candidacy. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 89001, Government Code.

## HISTORY

- 1. New section filed 8–20–76; effective thirtieth day thereafter (Register 76, No. 34).
- Amendment of section heading filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
- Repealer filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

# Chapter 9.5. Ethics

## § 18930. Guide to Honorarium Regulations.

- (a) Prohibition on Acceptance of Honoraria Government Code Section 89502;
- (b) Definition of "Honorarium" Government Code Section 89501(a);
  - (1) Definition of "Speech Given" Section 18931.1;
  - (2) Definition of "Article Published" Section 18931.2;
  - (3) Definition of "Attendance" Section 18931.3;
  - (c) Exceptions to and Exclusions from "Honorarium":
  - (1) Earned Income Section 18932;
  - (2) Bona Fide Business, Trade or Profession Section 18932.1;
  - (3) Teaching As A Bona Fide Profession Section 18932.2;

- (4) Definition of "Predominant Activity" Section 18932.3;
- (5) General Exceptions Section 18932.4;
- (6) Direct Donations to Charitable Organizations Section 18932.5;
- (7) Travel Section 18950, et seq.
- (d) Returning Honoraria Section 18933.

NOTE: Authority cited: Sections 83112 and 89501, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 11-12-92; operative 12-14-92 (Register 92, No. 46).
- 2. Change without regulatory effect adopting new chapter 9.5 and relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of section heading, first paragraph, subsections (a), (e), (f) and NOTE filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- 4. Amendment of section heading, repealer of first paragraph, amendment of subsections (a), (b) and (d), repealer of subsections (e)–(f), and amendment of NOTE filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

# § 18930.1. Prohibition on Acceptance of Honoraria. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 and 89502, Government Code.

#### HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3 Amendment of section heading and subsection (c) filed 3–14–95; operative 3–14–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
- 4. Repealer of section and amendment of NOTE filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18931. Definition of "Honorarium." [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 and 89502, Government Code.

#### HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Repealer of section and amendment of NOTE filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

# § 18931.1. Definition of "Speech Given".

For purposes of Government Code Sections 89501 through 89506, "speech given" means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. A "speech given" does not include a comedic, dramatic, musical, or other similar artistic performance.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of section and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

# § 18931.2. Definition of "Article Published".

- (a) For purposes of Government Code Sections 89501 through 89506, an "article published" means a nonfictional written work:
- (1) That is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and
- (2) That is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication.
- (b) For purposes of this regulation, an individual receives payment for an article published if he or she receives a payment for:
- (1) Drafting any part of an article published, except activities solely involving secretarial assistance.
  - (2) Being identified as an author of or contributor to the article.
  - (c) "Article" does not include books, plays, or screenplays.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Amendment of subsections (a) and (b) and NOTE filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

### § 18931.3. Definition of "Attendance".

For purposes of Government Code Sections 89501 through 89506, "attendance" means being present during, making an appearance at, or serving as host or master of ceremonies for, any public or private conference, convention, meeting, social event, meal, or like gathering.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections

# 89501 through 89506, Government Code. HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of section and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

# § 18932. Exceptions to "Honorarium": Earned Income.

- (a) "Honorarium" does not include income earned for personal services if:
- (1) The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to California Code of Regulations, Title 2, Sections 18932.1 through 18932.3; and
- (2) The services are customarily provided in connection with the business, trade, or profession.
- (b) For purposes of Government Code Sections 89501 through 89506 and this section, a nonprofit entity may be a "business."

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of subsection (b) and NOTE filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

# § 18932.1. Exceptions to "Honorarium": Bona Fide Business, Trade, or Profession.

- (a) For purposes of Government Code Sections 89501 through 89506, a business is presumed to be "bona fide" if the owner of the business has maintained the following documents for the two calendar years immediately preceding the year in which the consideration for the payment was provided:
- (1) Books and records of accounting consistent with the operation of a business; and
- (2) Copies of tax returns filed in connection with the operation of the claimed business.
- (b) For purposes of Government Code Sections 89501 through 89506, a business that has been in existence for less than two calendar years is presumed to be "bona fide" if:
- (1) Its owner has maintained records of income and expenses, consistent with the operation of a business, from the date of inception of the claimed business; and,
  - (2) Any three of the following are maintained:
- (A) Copies of tax returns filed in connection with the operation of the claimed business for one year;
- (B) Records of bank accounts or lines of credit in the name of the business:
- (C) Records of purchase, lease, or rental of equipment and supplies for use solely by the business;
- (D) Records of expenditures for rent, wages, business or professional insurance, or other similar, customary costs of doing business;

- (E) Records of efforts to market goods or services provided by the business; or
- (F) Documentation of expertise by the business operator in connection with the service provided or product sold by the business.
- (c) For purposes of Government Code Sections 89501 through 89506, a trade or professional practice is presumed to be "bona fide" if either of the following applies:
- (1) The tradesperson or professional practitioner possesses current licensure or certification which is issued by state or federal occupational licensing authority, the issuance of which requires a demonstration of skill and knowledge in connection with the relevant trade or profession.
- (2) Where licensure or certification is not required by a governmental licensing authority, the practitioner is employed as a researcher or is a member of the faculty of a college or university.
- (d) A business whose predominant activity is making speeches is not "bona fide" for purposes of Government Code Sections 89501 through 89506.

NOTE: Authority cited: Sections 83112 and 89502, Government Code. Reference: Sections 89501 through 89506, Government Code.

## HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Amendment of subsections (a), (b), (c), (d) and NOTE filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

# § 18932.2. Exceptions to "Honorarium": Teaching as a Bona Fide Profession.

For purposes of Government Code Sections 89501 through 89506, an individual is presumed to be engaged in the bona fide profession of teaching in any of the following circumstances:

- (a) The individual is under contract or employed to teach at a school, college, or university accredited approved or authorized as an educational institution by an agency of the State of California; or by an agency of any other state in the United States; or by an agency of the Federal government; or by a bona fide independent accrediting organization.
- (b) The individual receives payment for teaching a course, presented to assist in maintenance or improvement of professional skills or knowledge where the course provides credit toward continuing education requirements of the pertinent profession.
- (c) The individual receives payment for teaching students enrolled in an examination preparation program, such as a State Bar examination review course.

NOTE: Authority cited: Sections 83112 and 89502, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of first paragraph and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

#### § 18932.3. Definition of "Predominant Activity".

For purposes of Government Code Sections 89501 through 89506, speechmaking is presumed to be the "predominant activity" of an individual's business, trade, or profession in the following circumstances:

- (a) For a business, trade, or profession in existence for one year or more:
- (1) During the 12-month period prior to and including the date of the speech, more than 50 percent of the hours spent on an individual's business, trade, or profession is devoted to the preparation and/or delivery of speeches; or
- (2) During the 12-month period prior to and including the date of the speech more than 50 percent of the gross income of the individual's business, trade, or profession is derived from the preparation and/or delivery of speeches.
  - (b) For a business, trade or profession in existence less than one year:
- (1) During the 30-day period prior to and including the date of the speech, more than 50 percent of the hours spent on an individual's busi-

ness, trade, or profession is devoted to the preparation and/or delivery of speeches; or

(2) During the 30-day period prior to and including the date of the speech, more than 50 percent of the gross income of an individual's business, trade, or profession is derived from the preparation and/or delivery of speeches.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).

 Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

3. Amendment of first paragraph, subsections (a)(1)–(2) and (b)(1)–(2), and NoTE filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

# § 18932.4. Exceptions to "Honorarium": General Exceptions.

None of the following is an "honorarium," as defined by Government Code Section 89501(a), and none is subject to any prohibitions on honoraria.

- (a) Information materials as defined by California Code of Regulations, Title 2, Section 18942.1.
- (b) A payment received from one's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such person. However, a payment from any such person is an honorarium if the donor is acting as an agent or intermediary for any person not identified in this subdivision.
- (c) A campaign contribution required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.
- (d) A personalized plaque or trophy with an individual value of less than two hundred fifty dollars (\$250).
- (e) Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. These items are not payments and need not be reported by any filer.
- (f) Any of the following items, when provided to an individual who attends any public or private conference, convention, meeting, social event, meal, or like gathering without providing any substantive service:
- (1) Benefits, other than cash, provided at the conference, convention, meeting, social event, meal, or gathering.
- (2) Free admission and food or beverages provided at the conference, convention, meeting, social event, meal, or gathering.
- (3) The foregoing items may be reportable as gifts and limited by Government Code Section 89503. Reference should be made to Government Code Section 82028 and to California Code of Regulations, Title 2, Sections 18940, *et seq.*, to determine whether or not these items are gifts that are reportable or otherwise limited.
- (g) Any payment made for transportation, lodging and subsistence that is exempted from prohibitions on honoraria by Government Code Section 89506 or California Code of Regulations, Title 2, Sections 18950, *et seq.*

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 89501 through 89506, Government Code.

# HISTORY

- 1. New section filed 11-12-92; operative 12-14-92 (Register 92, No. 46).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Amendment of first paragraph, subsections (b), (f) and (g), and Note filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- Amendment of first paragraph and subsection (f)(3) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

# § 18932.5. Exclusions From "Honorarium": Direct Charitable Donations.

The following payments are excluded from the definition of "honorarium":

- (a) A charitable donation, if all of the following apply:
- (1) The donation is made directly to a bona fide charitable, educational, civic, religious, or similar tax–exempt, nonprofit organization, and is not delivered to the individual;
- (2) The individual does not make the donation a condition for his or her speech, article, or attendance;
- (3) The individual does not claim the donation as a deduction from income for tax purposes;
- (4) The donation will have no reasonably foreseeable financial effect on the individual, or on any member of his or her immediate family; and
- (5) The individual is not identified to the recipient organization in connection with the donation. If the individual knows or has reason to know that a donor intends to make such a donation, the individual must inform the donor that the donation cannot be made in the individual's name.

NOTE: Authority: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 10-14-92; operative 11-13-92 (Register 92, No. 42).
- Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
   Amendment of subsections (a)(1)-(5) and Note filed 7-25-95; operative
- Amendment of subsections (a)(1)–(5) and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

### § 18933. Returning Honoraria.

- (a) The prohibitions imposed on acceptance of an honorarium by Government Code Section 89502 do not apply if, within 30 days of receipt of an honorarium, any of the following occurs:
- (1) The individual returns the honorarium, unused, to the donor or the donor's agent or intermediary, if any;
- (2) The individual delivers the honorarium to the Controller for donation to the General Fund (in the case of state officials or candidates), or to the individual's agency for donation to an equivalent fund (in the case of local officials or candidates), and does not claim the donation as a deduction for income tax purposes; or
- (3) If the honorarium is not a payment of money and if the individual is unable to comply with subdivision (a)(1) or subdivision (a)(2) above, the individual reimburses the donor or the donor's agent or intermediary, if any, for the value or use of the honorarium.
- (b) Neither the individual nor the donor shall be required to report any honorarium returned, delivered or reimbursed pursuant to subdivision (a) as an honorarium, income, gift, or activity expense.

NOTE: Authority cited: Section 83112 Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
   Amendment of section and Note filed 7–25–95; operative 7–25–95 pursuant
- 3. Amendment of section and NOTE filed 7–25–95; operative 7–25–95 pursuan to Government Code section 11343.4(d) (Register 95, No. 30).
- 4. Amendment of subsections (a) and (a)(2), repealer of subsections (b)–(b)(3), subsection relettering, and amendment of newly designated subsection (b) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

# § 18935. Reporting Honoraria. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87207 and 89501 through 89506, Government Code.

- 1. New section filed 11-12-92; operative 12-14-92 (Register 92, No. 46).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of section heading, section and NOTE filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30)
- Repealer filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

#### § 18940. Guide to Gift Regulations.

- (a) Limits on Gifts—Government Code Section 89503
- (b) Gift Limit Amount—Section 18940.2
- (c) Definition of "Gift"—Government Code Section 82028(a)
- (1) Receipt, Promise and Acceptance of Gifts-Section 18941
- (2) Payments for Food—Section 18941.1
- (d) Exclusions and Exceptions
- (1) Exceptions to "Gift" and Exceptions to Gift Limits—Section
- (2) Definition of "Informational Material"—Section 18942.1
- (e) Return, Donation, or Reimbursement of a Gift—Section 18943
- (f) Recipient of the Gift
- (1) Valuation of Gifts to An Official and His or Her Family—Section 18944
  - (2) Passes or Tickets Given to an Agency—18944.1
  - (3) Gifts to an Agency—18944.2
  - (g) Source of Gifts—Section 18945
  - (1) Cumulation of Gifts; "Single" Source—18945.1
  - (2) Intermediary of a Gift—18945.3
  - (3) A Gift from Multiple Donors—18945.4
  - (h) Reporting and Valuation of Gifts: General Rule—Section 18946
  - (1) Passes and Tickets—Section 18946.1
  - (2) Testimonial Dinners and Events—Section 18946.2
  - (3) Wedding Gifts—Section 18946.3
  - (4) Tickets to Nonprofit and Political Fundraisers—Section 18946.4
- (5) Prizes and Awards From Bona Fide Competitions—Section
  - (i) Travel—Sections 18950 through 18950.4

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 82030, 87100, 87103, 87207, 87302 and 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 6-22-94; operative 6-22-94 (Register 94, No. 25)
- 2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- New subsection (a), subsection relettering and amendment of NOTE filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- 4. Repealer of first pragraph and subsection (a), amendment and relettering of former subsection (b) to subsection (a), new subsection (b), and amendment of subsections (c)-(c)(1) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18940.1. Limits on Gifts. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 1-25-93; operative 1-25-93 (Register 93, No. 5).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3 Amendment of subsections (a)-(c) and new subsection (d) filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
- 4. Change without regulatory effect amending NOTE filed 7-27-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 30). 5. Repealer filed 10–23–96; operative 10–23–96 pursuant to Government Code
- section 11343.4(d) (Register 96, No. 43).

#### § 18940.2. Gift Limit Amount.

- (a) For purposes of Government Code section 89503, the adjusted annual gift limitation amount in effect for the period January 1, 2007, to December 31, 2008, is \$390.
- (b) The gift limitation of \$250 in Government Code section 89503 shall be adjusted biennially by the Commission to reflect changes in the Consumer Price Index and rounded to the nearest ten dollars (\$10). The resulting figure shall be the adjusted gift limitation in effect until January 1 of the next odd-numbered year.
- (c) The gift limitation adjustment shall be based on the California Consumer Price Index for All Urban Consumers based on Consumer Price Index data obtained from the United States Bureau of Labor Statistics for the calendar year immediately preceding the year in which the adjustment is to take effect.

- (d) The adjusted gift limitation amount shall be calculated by the Commission as follows:
- (1) The base dollar amount of \$250 shall be increased or decreased by the cumulative percentage change in the annual average California Consumer Price Index from 1990 to the end of the calendar year immediately preceding the year in which the adjustment will take effect.
- (2) The dollar amount obtained by application of the calculation set forth in subdivision (b) shall be rounded to the nearest ten dollars (\$10).

<sup>1</sup>For example, the California Consumer Price Index for All Urban Consumers for 1990 is 135.0. In 1992, the California CPI increased to 145.6. Therefore, the adjusted gift limitation amount beginning in 1993 would be calculated as follows:

$$\frac{$250 \times 145.6}{135.0}$$
 = \$269.63 (\$270 rounded to the nearest \$10.)

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 89503 and 89506, Government Code

#### HISTORY

- 1. Renumbering of former section 18954 to new section 18940.2, amendment of section heading, new subsection (a), subsection relettering, repealer of former subsection (c), and amendment of footnote filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 2. Amendment of subsections (a) and (b) and NOTE filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
- 3. Amendment filed 12-10-98; operative 12-10-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 50).
- 4. Amendment of subsection (a) and amendment of NOTE filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
- 5. Amendment of subsection (a) filed 1–16–2003; operative 1–1–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3)
- Editorial correction of HISTORY 5 (Register 2003, No. 12).
- 7. Amendment of subsection (a) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).
- 8. Amendment of subsection (a) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

# § 18941. Receipt, Promise and Acceptance of Gifts.

- (a) Receipt or Acceptance of a Gift. Except as otherwise provided in this section or in California Code of Regulations, Title 2, Section 18943, a gift is "received" or "accepted" when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.
- (1) In the case of a rebate or discount which, based on Government Code Section 82028, would otherwise be a gift, the gift is "received" or "accepted" when the recipient knows that the rebate or discount is not made in the regular course of business to members of the public without regard to official status.
- (2) Except for passes or tickets as set forth in California Code of Regulations, Title 2, Section 18946.1(a), discarding a gift does not negate receipt or acceptance of a gift.
- (3) Turning a gift over to another person does not negate receipt or acceptance of a gift.
- (b) Disqualification: Promise of a Gift. For the purposes of Government Code Sections 87100 and 87103, a gift is "promised" on the date an offer to give the gift is made if the recipient knows that a gift has been offered and ultimately obtains actual possession of the gift or takes any action exercising direction or control over the gift.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 86204, 87103 and 89501 through 89506, Government Code.

- 1. New section filed 1-26-94; operative 1-26-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).
- 2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

- 3. Amendment of subsections (b)–(c) and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- 4. Amendment of section heading, repealer of subsection (a), subsection relettering, and amendment of newly designated subsection (a)(1) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

#### § 18941.1. Payments for Food.

Except as provided in Government Code section 82028 and California Code of Regulations, Title 2, sections 18727.5, 18941, 18942, 18943, 18946.2, 18946.5, 18950.3, and 18950.4, a payment made to an elected officer or candidate for his or her food is a gift.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87207 and 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 1–12–94; operative 1–12–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Change without regulatory effect amending Note filed 7–27–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 30).
- 4. Amendment filed 5-2-2005; operative 5-2-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

# § 18942. Exceptions to Gift and Exceptions to Gift Limits.

- (a) For purposes of Government Code section 82028, none of the following is a gift and none is subject to any limitation on gifts:
- (1) Informational material as defined by 2 Cal. Code Regs. section 18942.1.
- (2) Except for passes and tickets as provided in 2 Cal. Code of Regs. section 18946.1, a gift that is not used and that, within 30 days after receipt, is returned or donated pursuant to 2 Cal. Code of Regs. section 18943, or for which reimbursement is paid pursuant to said 2 Cal. Code of Regs. section 18943.
- (3) A gift from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent—in—law, brother—in—law, sister—in—law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person, unless the donor is acting as an agent or intermediary for any person not identified in this subdivision (a)(3).
- (4) A campaign contribution required to be reported under the Government Code, title 9, chapter 4 (commencing with Government Code section 84100).
  - (5) Any devise or inheritance.
- (6) A personalized plaque or trophy with an individual value of less than two hundred fifty dollars (\$250).
- (7) Hospitality (including food, beverages, or occasional lodging) provided by an individual in his or her home when the individual or a member of the individual's family is present, to an official. (Note: See 2 Cal. Code Regs. section 18630 for the rule concerning "home hospitality" provided by a lobbyist.)
- (8) Gifts exchanged between an individual who is required to file a statement of economic interests and another individual, other than a lob-byist, on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. For purposes of this subdivision, and notwithstanding 2 Cal. Code Regs. section 18946.2(b), "gifts exchanged" includes food, beverages, entertainment, and nominal benefits provided at the occasion by the honoree or another individual, other than a lobbyist, hosting the event.
- (9) Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position. This shall not include donations of cash.
- (10) Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if such payments are available to members of the public without regard to official status.

- (11) Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. These items are not payments and need not be reported by any filer.
- (12) The transportation, lodging, and subsistence specified by 2 Cal. Code Regs. section 18950.4.
- (b) The following items, if they are otherwise gifts, are exempt from the limitations on gifts described in Government Code section 89503:
- (1) Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by Government Code section 89506 and 2 Cal. Code Regs. sections 18950, et seq.
  - (2) Wedding gifts.

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NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87100, 87103, 87207, 87302 and 89503, Government Code.

#### HISTORY

- 1. New section filed 1–12–94; operative 1–12–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of subsections (b)–(b)(2) and amendment of NOTE filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
- 4. New subsections (a)(9) and (a)(10), subsection renumbering and amendment of subsection (b)(2) filed 4–15–98; operative 4–15–98 pursuant to 2CCR section 18312(e) (Register 98, No. 16).
- 5. Amendment filed 5–25–2006; operative 6–24–2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 21).

#### § 18942.1. Definition of "Informational Material."

"Informational material" means any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks. Informational material may include:

- (a) Books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.
- (b) Scale models, pictorial representations, maps, and other such items, provided that where the item has a fair market value in excess of \$390, the burden shall be on the recipient to demonstrate that the item is informational material.
- (c) On–site demonstrations, tours, or inspections designed specifically for the purpose of assisting the recipient public officials or candidates in the performance of either their official duties or of the elective office they seek. No payment for transportation to an inspection, tour, or demonstration site, nor reimbursement for any expenses in connection therewith, shall be deemed "informational material" except insofar as such transportation is not commercially obtainable.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87103(e) and 89503, Government Code.

- 1. New section filed 1-25-93; operative 1-25-93 (Register 93, No. 5).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
   Amendment of section and Note filed 7–25–95; operative 7–25–95 pursuant
- 3. Amendment of section and Note filed 7–25–95; operative 7–25–95 pursuan to Government Code section 11343.4(d) (Register 95, No. 30).
- 4. Amendment of subsection (b) and NOTE filed 4–9–97; operative 4–9–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
- 5. Amendment of subsection (b) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
  6. Amendment of subsection (b) filed 12-6-2000; operative 1-1-2001 pursuant
- 6. Amendment of subsection (b) filed 12–6–2000; operative 1–1–2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
- 7. Amendment of subsection (b) filed 1–16–2003, operative 1–1–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

- 8. Editorial correction of HISTORY 7 (Register 2003, No. 12).
- Amendment of subsection (b) filed 1–4–2005; operative 1–1–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).
- 10. Amendment of subsection (b) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51)

#### § 18943. Return. Donation, or Reimbursement of a Gift.

- (a) General Rule for Return, Donation, or Reimbursement of a Gift. A gift is neither accepted nor received if it is returned, donated, or reimbursed in any manner set forth below:
- (1) The gift is returned to the donor, or to the donor's agent or intermediary, unused, within 30 days of receipt or acceptance. In such event, neither the recipient nor the donor shall be required to disclose the receipt or making of a gift or activity expense; or
- (2) The gift is donated, unused, to a charitable organization within 30 days of receipt or acceptance, without being claimed as a charitable contribution for tax purposes. In such event, neither the recipient nor the donor shall be required to disclose the receipt or making of a gift or activity expense; or
- (3) The gift is donated, unused, to a state, local, or federal government agency, within 30 days of receipt or acceptance, without being claimed as a deduction for tax purposes. In such event, neither the recipient nor the donor shall be required to disclose the receipt or making of a gift or activity expense; or
- (4) The recipient, within 30 days of receipt or acceptance, reimburses the donor, or the donor's agent or intermediary, for all or a portion of the gift. In such event the value of the gift is reduced by the amount of the reimbursement, and the amount of any gift or activity expense which must be disclosed is reduced by the amount of the reimbursement.
- (b) Relief from Disqualification by Return, Donation, or Reimbursement. In order to relieve the recipient of an otherwise disqualifying financial interest based upon the receipt or acceptance of a gift valued at \$390 or more pursuant to Government Code section 87100, the return, donation, or reimbursement of the gift pursuant to subdivision (a), above:
- (1) Must occur within 30 days of receipt or acceptance and prior to the date the recipient makes, participates in making, or uses his or her official position to influence the government decision in question; or,
- (2) If the return, donation, or reimbursement has not been made prior to the decision, the recipient must publicly disclose the receipt or acceptance of the gift on the public record, disclose its value, and declare that the return, donation, or reimbursement will occur within two working days following the decision. The subsequent return, donation, or reimbursement must be made within two working days, and within 30 days from receipt or acceptance, and must be documented in the public record. NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87103, 87207, 87302 and 89503, Government Code.

#### HISTORY

- 1. Renumbering of former section 18726.1 to section 18943, including amendment of section heading, section and NOTE filed 1-26-94; operative 1-26-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).
- 2. Change without regulatory effect relocating section filed 11-17-94 pursuant to
- 2. Charge without regulatory effect refrequently section 100, title 1, California Code of Regulations (Register 94, No. 46).
  3. Amendment of subsection (b) filed 3–14–95; operative 3–14–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
  4. Amendment of section and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- 5. Amendment of subsection (b) and NOTE filed 6-3-97; operative 6-3-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 23).
- 6. Amendment of subsection (b) filed 5–11–99; operative 5–11–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
- 7. Amendment of subsection (b) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49)
- 8. Amendment of subsection (b) filed 1–16–2003; operative 1–1–2003. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

- Editorial correction of HISTORY 8 (Register 2003, No. 12).
   Amendment of subsection (b) filed 1–4–2005; operative 1–1–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).
   Amendment of subsection (b) filed 12–18–2006; operative 1–1–2007. Sub-
- mitted to OAL pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

# § 18944. Gifts to an Official's or a Candidate's Immediate Family.

- (a) For purposes of Government Code section 82028, a single gift given to both a public official or candidate (hereinafter "official") and one or more members of the official's immediate family is a gift to the official for the full value of the gift.
- (b) A gift given to a member or members of an official's immediate family is not a gift to the official unless it confers a personal benefit on the official. A gift given to a member or members of an official's immediate family confers a "personal benefit" on the official for purposes of this regulation, when any of the following factors apply:
- (1) Benefit: The official enjoys direct benefit from the gift, except for a benefit of nominal value;
- (2) Use: The official uses the gift, and the official's use is not nominal or incidental to the use by the member or members of the official's immediate family;
- (3) Discretion and Control: The official exercises discretion and control over who will use the gift or dispose of the gift.
- (c) Notwithstanding the provisions of subdivisions (a) and (b), a gift given to a member of an official's immediate family is not a gift to the official, if the official can show that there was no donor intent to make a gift to the official. Factors that may negate a donor's intent to make a gift to a public official include, but are not limited to, the following:
- (1) Relationship between donor and recipient: The existence of a working or social relationship between the donor and the official's spouse or immediate family member.
- (2) Nature of the gift: It is clear from the nature of the gift that only the official's immediate family members can use or enjoy direct benefit from the gift.
- (3) Manner in which the gift is offered or delivered: The gift is offered or delivered to a member of the official's immediate family in a manner, and under such circumstances, that it is clear there is no intent to make a gift to the official. Such circumstances include a gift offered in writing, or delivered by mail or other written communication, to one or more members of the official's immediate family and the name or familial designation (such as "spouse") of the member or members of the immediate family appear on the envelope or in the communication rendering or offering the gift, and the gift is intended for the family member's or members' use or enjoyment.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. Renumbering of former section 18726.2 to section 18944 filed 1–26–94; operative 1-26-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Amendment of section heading and section filed 7-24-2006; operative -23-2006. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 30).

# § 18944.1. Recipient of the Gift: Passes or Tickets Given to an Agency.

Passes or tickets which provide admission or access to facilities, goods or services, or other tangible or intangible benefits (including passes to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places or events, but not including travel or lodging), which are provided to an official are not gifts to the official whenever (a), (b), (c), (d), or (e) applies:

(a) The donor gives the tickets or passes to the official's agency, through a responsible official of the agency, for the sole purpose of distributing the passes or tickets to officials of the agency and their spouses and immediate families and use of the tickets or passes is so limited by the agency; and

The tickets or passes are not earmarked by the donor for any specific officials of the agency; and

The agency retains a written public record of the terms under which the tickets were accepted by the agency and the terms under which the tickets or passes were distributed and to whom they were distributed.

- (b) The tickets or passes are provided to the agency for an event at a publicly-owned facility under the jurisdiction of the agency and neither the agency nor any official of the agency receiving or distributing the tickets or passes for the agency gives any of the tickets or passes to any person who is not an official of the agency, or not the official's spouse or immediate family member.
- (c) The tickets or passes are provided to the agency as part of the contract for the use of the facility and the distribution and use of the passes or tickets are regulated by an officially adopted policy of the agency.
- (d) The tickets or passes are provided to the official of the agency for use by the official and his or her spouse and immediate family because the official has an official or ceremonial role or function to perform on behalf of the agency at the event in question.
- (e) The tickets or passes are provided to an agency or officials of the agency for use at an event at a publicly—owned facility constructed or operated under the provisions of a joint exercise of powers agreement and such agency is a party to the joint exercise of powers agreement, and the distribution and use of the passes or tickets are regulated by an officially adopted policy of the agency.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

#### HISTORY

- 1. Renumbering of former section 18726.7 to section 18944.1 with amendment of section heading filed 6–22–94; operative 6–22–94 (Register 94, No. 25).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of first paragraph and subsections (a)–(b) and (d)–(e) filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

#### § 18944.2. Gifts to an Agency.

- (a) Applicability. This regulation sets forth circumstances under which a payment made to a state or local government agency, that is controlled by the agency and used for official agency business, is not considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.
  - (b) Definitions.
- (1) "Payment" means a payment as defined in Section 82044 and includes a monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or provision of, goods or services to an agency.
- (2) "Agency head" means an individual in whom the ultimate legal authority of an agency is vested, or who has been delegated authority to make determinations by the agency for purposes of this regulation.
- (c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as defined in Section 82028, shall be considered a gift to the public official's agency and not a gift to the public official if all of the following requirements are met:
- (1) Agency Controls Use of Payment. The agency head, or his or her designee, determines and controls the agency's use of the payment. The donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment. If the payment will provide a personal benefit to an official, the agency head, or his or her designee, shall select the individual who will use it. The agency official who determines and controls the agency's use of the payment may not select himself or herself as the individual who will use the payment.
- (2) Official Agency Business. The payment must be used for official agency business.

- (3) Agency Reports the Gift. Within 30 days after use of the payment, the agency reports the payment on a form prescribed by the Commission that includes the following information:
- (A) A description of the payment, the date received, the intended purpose, and the amount of the payment (or the actual or estimated value of the goods or services provided).
- (B) The name and address of the donor. If the donor is not an individual, the report shall also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from other persons for the specific purpose of making the payment to the agency, the report shall contain the names of and amounts given by these persons.
- (C) The agency's use of the payment, and the name, title, and department of the agency official for whom the payment was used. The report shall include the date(s) and place(s) of travel, and a breakdown of the total expenses for transportation, lodging, meals and other related expenses.
- (D) The form is signed by the agency head, or his or her designee, and maintained by the agency as a public record subject to inspection and copying under Section 81008(a).
- (E) A state agency shall provide the completed form to the Commission (or in the case of the Commission to the office of the Attorney General), within 30 days after use of the payment, by mail, personal delivery, electronic mail or facsimile. If the state agency maintains a website, the state agency shall also post a copy of the form or the information in the form on its website in a prominent fashion within 30 days after use of the payment. If the state agency does not maintain a website, the Commission shall post a copy of the form or the information in the form on its website.
- (F) A local agency shall provide the completed form to the filing officer who receives the agency employees' statements of economic interests, within 30 days after use of the payment, by mail, personal delivery, electronic mail or facsimile. The filing officer shall post a copy of the form or the information in the form on its website, or if it does not maintain a website, shall provide a copy of the form to the Commission which shall post the information on its website.
- (G) The individual in the agency who has official custody of these forms is the filing officer for the forms, keeps a log of the forms under both the name of the agency and official receiving the payment, and maintains the forms for a period of not less than four years.
- (d) Limitations on Application of this Regulation. The exception provided in subdivision (c) does not apply to the following payments:
- (1) A payment for travel, including transportation, lodging, and meals, for a state or local elected officer, as defined in Section 82020, or an official specified in Section 87200.
- (2) A payment for travel to the extent that it exceeds the agency's reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses, or if the agency has no standard policy or practice concerning reimbursement rates, the State per diem rates as set forth in applicable sections of the State Administrative Manual and Department of Personnel Administration regulations, or the Internal Revenue Service rates for reimbursement of these expenses as set forth in the U.S. General Service Administration's website under "Per Diem Rates" and Internal Revenue Service Publications 463 and 1542, or their successors.
- (3) A payment for travel that the agency head, or his or her designee, has not preapproved in writing in advance of the date of the trip.
- (4) Passes or tickets, as described in Regulation 18944.1, which shall be governed by that regulation.
- (e) Public Colleges and University Research Projects. Notwithstanding this regulation, a donation to a California public college or university for a specific research project that is received consistent with the requirements of Regulation 18702.4(c) or a meal received in the course of the college's or university's official fundraising activity, which qualifies under federal and state law for a deduction as a charitable contribution for educational purposes, will be deemed a gift to the college or university.
- (f) Payments from the Federal Government. Notwithstanding this regulation, a grant, reimbursement, funding, or other payment received by

a state or local government agency from a federal government agency for education, training, or other inter–agency programs, will not be considered a gift to the public official who receives a personal benefit from the payment.

#### COMMENTS:

1. Acceptance of a pass or discount from a transportation company by a public officer, other than a Public Utilities Commissioner, may result in forfeiture of the official's office pursuant to Article XII, Section 7 of the California Constitution.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501–89506, Government Code.

#### HISTORY

- 1. New section filed 6-22-94; operative 6-22-94 (Register 94, No. 25).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100. title 1, California Code of Regulations (Register 94, No. 46).
- 3. Change without regulatory effect amending Note filed 7–27–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 30).
- Change without regulatory effect amending subsection (b) filed 7–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
- Repealer and new section filed 6-11-2008; operative 7-1-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law. 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 24).

# § 18945. Source of Gifts.

- (a) General Rule. A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.
- (1) If a person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials, the person is the source of the gift to the official or officials
- (2) Dues. If a person pays dues or makes a similar payments for membership in a bona fide association, including any federation, confederation, or trade, labor or membership organization, some portion of which dues or similar payments are used to make gifts to officials, that person is not the source of the gifts to those officials. However, the person is the source of the gift if the sole or primary purpose of the dues or similar payments is to make gifts to officials.
- (b) Presumption of Source by Officials. An official may presume that the person delivering the gift or, if the gift is offered but has not been delivered, the person offering the gift to him or her is the source of the gift unless either of the following are met:
- (1) The person delivering or offering the gift discloses to the official the actual source of the gift; or
- (2) It is clear from the surrounding circumstances at the time the gift is delivered or offered that the person delivering or offering the gift is not the actual source of the gift.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 86111, 87207, 87302, 89501, 89504 and 89505, Government Code.

#### HISTORY

- 1. New section filed 1-25-93; operative 1-25-93 (Register 93, No. 5).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

# § 18945.1. Cumulation of Gifts; "Single" Source.

For purposes of the limitations in Government Code Sections 89501 through 89506, two or more gifts are cumulated as being from a "single" source if any of the following circumstances apply:

- (a) Gifts from an individual and an entity in which the individual has an ownership interest of more than 50 percent shall be cumulated as being gifts from a "single" source.
- (b) Except as provided in subdivision (a), gifts from an individual and an entity shall be cumulated as being gifts from a "single" source if the individual in fact directs and controls the decision of the entity to make the gifts.
- (c) If the same person or a majority of the same persons in fact directs and controls the decisions of two or more entities to make gifts to one or

more public officials or candidates, gifts by those affiliated entities shall be cumulated as being gifts from a "single" source.

(d) Business entities in a parent–subsidiary relationship, or business entities with the same controlling (more than 50 percent) owner, shall be considered a "single" source unless the business entities act independently in their decisions to make gifts to one or more public officials or candidates. For purposes of this regulation, a parent–subsidiary relationship exists when one business entity owns more than 50 percent of another business entity.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 1-25-93; operative 1-25-93 (Register 93, No. 5).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of first paragraph, subsections (c)–(d) and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

#### § 18945.3. Intermediary of a Gift.

- (a) Intermediaries of Gifts to Persons Required to File Under Title 9, Chapter 7, Article 2 of the Government Code—No person shall make a gift totaling fifty dollars (\$50) or more in a calendar year to a person described in Article 2 on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.
- (b) Intermediaries of Gifts to Persons Required to File Under Title 9, Chapter 7, Article 3 of the Government Code—No person shall make a gift of fifty dollars (\$50) or more in a calendar month on behalf of another, or while acting as the intermediary or agent of another to a person whom he knows or has reason to know may be required to disclose the gift pursuant to a conflict of interest code, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.
- (c) Notwithstanding subdivisions (a) or (b) above, it shall be unlawful for a lobbyist or lobbying firm to act as an intermediary in the making of any gift aggregating more than \$10 per calendar month to a state candidate, elected state officer, legislative official or agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86203, 87210 and 87313, Government Code.

#### HISTORY

- New section filed 1–26–94; operative 1–26–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

#### § 18945.4. A Gift from Multiple Donors.

A gift which is received from multiple donors must be reported if the gift's value equals or exceeds \$50. The name of any donor whose share of the gift is less than \$50 in value need not be separately reported; it is sufficient to describe in general terms those who gave the gift. If, however, the share of any donor or his or her [agent or] intermediary is \$50 or more in value, his or her name must be reported.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

- 1. Renumbering of section 18726.6 to section 18945.4 with amendments filed 1-25-93; operative 1-25-93 (Register 93, No. 5).
- 2. Editorial correction deleting irrelevant HISTORY note (Register 94, No. 25).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

## § 18946. Reporting and Valuation of Gifts.

(a) Scope of Section. Except as specified in 2 Cal. Code Regs. sections 18946.1 through 18946.5, inclusive, gifts shall be valued at fair market value as of the date of receipt or promise. Sections 18946.1 through 18946.5 provide for the valuation of specific types of gifts in the following situations:

Passes and Season Tickets—Regulation 18946.1

Testimonial Dinners and Events, Invitation—Only Events, and Ceremonial Functions—Regulation 18946.2

Wedding Gifts—Regulation 18946.3

Tickets to Nonprofit and Political Fundraisers—Regulation 18946.4
Prizes and Awards From Bona Fide Competitions—Regulation 18946.5

- (b) General Rule for Valuation of Unique Gifts. Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable. If the cost to the donor is unknown and unascertainable, the recipient shall make a reasonable approximation. In making such an approximation, the recipient shall take into account the price of similar items. If similar items are not available as a guide, a good faith estimate shall be utilized.
- (c) Except as specified in 2 Cal. Code Regs. sections 18943, 18944, and 18946.1, a gift must be valued, for purposes of disclosure and disqualification, even if unused, discarded or given to another person.
- (d) Definitions: For purposes of this section and 2 Cal. Code Regs. sections 18946.1 through 18946.5 and section 18640, the following definitions apply:
- (1) "Face Value." The term "face value" means the price indicated on the ticket, or if no price is indicated, the price at which the ticket or similar pass would otherwise be offered for sale to the general public by the operator of the venue or host of the event who offers the ticket for public sale.
- (2) "Ticket/Pass." A "ticket" or "pass" means anything that provides an admission privilege to an event or function and for which similar tickets or passes are offered for sale to the public.
- (3) "Invitation." An "invitation" means a request to attend an event or function by the sponsor of the event or function, that is not a ticket or pass as defined above in subsection (d)(2) of this section and 2 Cal. Code Regs. section 18944.1, and where admission to the event is provided by such invitation only.
- (4) "Specific Item." The term "specific item" means a tangible item received by an official or candidate at an event that is not included among the non–cash nominal items presented to all attendees at the event.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87207 and 87302, Government Code.

#### HISTORY

- Renumbering of former section 18726 to section 18946, including amendment
  of section heading, section and Note filed 1-12-94; operative 1-12-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).
- 2. Editorial correction deleting irrelevant HISTORY notes (Register 94, No. 25).
- 3. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Amendment of subsections (a) and (c) and new subsections (d)–(d)(4) filed 5–2–2005; operative 5–2–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

# § 18946.1. Reporting and Valuation of Gifts: Passes and Tickets.

- (a) A pass or ticket that provides one—time admission or access to facilities, goods, services, or other incidental tangible or intangible benefits (including a pass to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places or events, and also including a ticket for theater, opera, sporting, or similar event, but not including travel or lodging) shall be valued at the face value of the pass or ticket, provided that the face value is a price that was, or otherwise would have been, offered to the general public. A pass or ticket has no value unless it is ultimately used or transferred to another person.
- (b) A pass or ticket that provides repeated admission or access to facilities, goods, services, or other incidental tangible or intangible benefits

(including a pass to motion picture theaters, amusement parks, parking facilities, country clubs and similar places or events, and also including a season ticket for theater, opera, sporting, or similar season events, but not including travel or lodging) shall be valued as follows:

- (1) For purposes of disclosure and the gift limits, the value shall be the fair market value of the actual use of the pass or ticket by the recipient, including guests who may accompany the recipient and who are admitted with the pass or ticket, plus the fair market value of any possible use by any person or persons to whom the privilege of use of the pass or ticket is transferred.
- (2) For purposes of disqualification, the value shall be the actual use of the pass or ticket by the official, including guests who may accompany the official and who are admitted with the pass or ticket, plus the fair market value of any possible use by any person or persons to whom the official transfers the privilege of use of the pass or ticket, through the date of the governmental decision in question, plus the fair market value of the maximum reasonable use following the date of the decision. If the official returns the pass or any unused ticket prior to the decision, the value shall be determined pursuant to subdivision (b)(1).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87207 and 87302, Government Code.

#### HISTORY

- 1. Renumbering of section 18726.3 to section 18946.1 with amendment of section heading, text and Note filed 1–25–93; operative 1–25–93 (Register 93, No. 5).
- 2. Editorial correction deleting irrelevant HISTORY note (Register 94, No. 25).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 4. Amendment of subsections (a) and (b)(1) filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- 5. Amendment of subsections (a), (b) and (b)(2) filed 5–2–2005; operative 5–2–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

# § 18946.2. Reporting and Valuation of Gifts: Testimonial Dinners and Events, Invitation–Only Events, and Ceremonial Functions.

- (a) Testimonial Dinners. When an official or candidate is honored at a testimonial dinner or similar event, at which campaign fundraising for the official or candidate does not occur, the value received is the official's or candidate's pro rata share of the cost of the event, plus the value of any specific item that is presented to the official or candidate at the event.
- (b) Invitation—Only Events. Except as provided in subdivisions (d) through (f) of this regulation, when an official or candidate attends an invitation—only event such as a banquet, party, gala, celebration, or other similar function, other than a nonprofit or political fundraiser as set forth in 2 Cal. Code Regs. section 18946.4, the value received is the official's or candidate's pro rata share of the cost of the event, plus the value of any specific item that is presented to the official or candidate at the event.
- (c) "Pro-rata share of the cost of the event." The term "pro rata share of the cost of the event" means the cost of all food and beverages, rent of the facilities, decorations, entertainment, and all other costs associated with the event, divided by the number of acceptances or the number of attendees.
- (d) Official or Ceremonial Functions. When an official performs an official or ceremonial function at an invitation—only event, as set forth in subdivision (b) of this regulation, in which the official is invited to participate by the event's sponsor or organizer to perform an official or ceremonial function, the value received is the cost of any food or beverages provided to the official plus the value of any specific item that is presented to the official at the event.
- (e) Drop-In Visit. Except as provided in subdivision (f) of this regulation, if an official attends an event referred to in subdivision (a) or (b) of this regulation and does not stay for any meal or entertainment otherwise provided at the event, and receives only minimal appetizers and drinks, the value of the gift received is the cost of the food and beverage consumed by the official and guests accompanying the official, plus the value of any specific item that is presented to the official at the event. For purposes of this subdivision, "entertainment" means a feature show or

performance intended for an audience, and does not include music provided for background ambiance.

(f) Lobbyists, Lobbying Firms, and Lobbyist Employers. Where an official attends an event referred to in subdivision (a) or (b) of this regulation, sponsored by any person required to file a periodic statement under Article 1 of Chapter 6 of this title, the value of the gift is determined pursuant to the provisions of 2 Cal Code Regs. section 18640.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87207, 87302 and 89501 through 89506, Government Code.

#### HISTORY

- 1. Renumbering of section 18726.4 to section 18946.2 with amendment of section heading, text and NOTE filed 1–25–93; operative 1–25–93 (Register 93, No. 5).
- 2. Editorial correction deleting irrelevant HISTORY notes (Register 94, No. 25).
- 3. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Amendment of section and Note filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- Amendment of section heading and section filed 5-2-2005; operative 5-2-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

# § 18946.3. Reporting and Valuation of Gifts: Wedding Gifts.

Notwithstanding the provisions of California Code of Regulations, Title 2, Section 18944, wedding gifts given to an official and his or her spouse or spouse–to–be are considered as gifts to both spouses equally, and the official is deemed to receive one–half of the value as determined pursuant to California Code of Regulations, Title 2, Section 18946, unless the gift is peculiarly adaptable to the personal use and enjoyment of one spouse or specifically and unequivocally intended exclusively for use and enjoyment by one spouse, in which event the full value of the gift is attributed to that spouse.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87207 and 87302, Government Code.

#### HISTORY

- 1. Renumbering of former section 18726.5 to section 18946.3, including amendment of section heading, section and Note filed 1–12–94; operative 1–12–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 2).
- 2. Editorial correction deleting irrelevant HISTORY note (Register 94, No. 25).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

# § 18946.4. Reporting and Valuation of Gifts: Tickets to Nonprofit and Political Fundraisers.

A gift of a ticket or other admission privileges to a specific fundraising event shall be valued as set forth below.

- (a) Nonprofit Fundraiser. Except as provided in subdivision (b), a ticket or other admission privilege to a fundraising event for a nonprofit, taxexempt organization that is not a committee as defined in Government Code section 82013(a) shall be valued as follows:
- (1) Where the event is a fundraising event for a nonprofit organization, and the ticket clearly states that a portion of the ticket price is a donation to the organization, then the value of the gift is the face value of the ticket reduced by the amount of the donation.
- (2) If there is no ticket indicating a face value or the ticket or other admission privilege has no stated price or no stated donation portion, the value of the gift is the pro rata share of the cost of any food, and beverages, plus any other specific item presented to the attendee at the event.
- (b) Where the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the ticket or other admission privilege has no value.
- (c) Political Fundraiser. Where the event is a fundraising event for a campaign committee or candidate, the ticket or other admission privilege has no value.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 87207 and 87302, Government Code.

## HISTORY

- 1. Renumbering of section 18726.8 to section 18946.4 with amendment of section heading, text and Note filed 1–25–93; operative 1–25–93 (Register 93, No. 5).
- 2. Editorial correction deleting irrelevant HISTORY note (Register 94, No. 25).

- 3. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 4. Amendment of subsections (a)–(a)(2) and amendment of NOTE filed 5–2–2005; operative 5–2–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

# § 18946.5. Prizes and Awards From Bona Fide Competitions.

A prize or an award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as an official or candidate. A prize or award which is not reported as a gift shall be reported as income.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 82030, 87207 and 87302, Government Code.

#### HISTORY

- 1. New section filed 1-25-93; operative 1-25-93 (Register 93, No. 5).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

# § 18946.6. Reporting and Valuation of Gifts: Air Transportation.

Air transportation that is a gift to a public official shall be valued as follows:

- (a) For transportation on a "commercial aircraft," the value of the ticket or fare the carrier charges to a member of the public for the same transportation provided to the official. For purposes of this regulation, "commercial aircraft" means an aircraft used to transport the general public for compensation or hire on a regular basis, and for which a fare is charged on a per–passenger basis.
- (b) For all other air transportation, the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of all of the following persons that share the same flight:
  - (1) "Designated employees" as defined in Section 82019.
  - (2) Public officials specified in Section 87200.
- (3) Members of Congress, and officers and employees of the executive, legislative, or judicial branch of the United States government.
- (c) The actual cost or fair market value of any other personal benefits provided to the official during the air transportation, including food, beverages, or entertainment, shall be treated as a separate gift to the official unless the benefit is included as part of the fare determined in subdivision (a) or (b).

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87207, 87302 and 89501–89506, Government Code.

#### HISTORY

New section filed 7-16-2008; operative 8-15-2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil CO10924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 29).

#### § 18950. Guide to Travel Regulations.

- (a) Gifts of Travel: Exceptions: —Section 18950.1 and Government Code Section 89506;
- (b) Travel in Connection With Speeches, Panels, and Seminars: Exception for All Individuals—Section 18950.3;
- (c) Payments for Travel in Connection with Campaign Activities—Section 18950.4

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82028, 86111, 87207, 87302 and 89501 through 89506, Government Code.

- 1. New section filed 1-27-93; operative 2-26-93 (Register 93, No. 5).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Amendment of section and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- 4. Repealer of first pragraph and amendment of subsections (a) and (c) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18950.1. Gifts of Travel: Exceptions.

The following provisions shall apply to payments made for travel pursuant to Government Code Sections 89501 through 89506:

- (a) Travel In Connection With Speeches, Panels, and Seminars.
- (1) Only a reportable payment is subject to the limitations on gifts specified in Government Code Section 89503. See California Code of Regulations, Title 2, Section 18950.3, to determine whether a payment in connection with a speech, panel, or seminar is reportable.
- (2) A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:
- (A) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and
- (B) The travel, including actual transportation and related lodging and subsistence, is in connection with a speech given by the official or candidate; the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech; and the travel is within the United States.

Except as otherwise provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for travel specified in this subdivision (a)(2), shall be reported in accordance with Government Code Section 87207(c).

- (b) Travel Provided by Governmental Entity or Charity. A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:
- (1) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and
- (2) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, defined in Section 203 of the Revenue and Taxation Code, or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person that is domiciled outside the United States and that substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Except as provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for transportation, lodging, and subsistence, specified by subdivision (b), shall be reported in accordance with Government Code Section 87207(c).

- (c) Travel Paid From Campaign Funds. A payment made for transportation and necessary lodging and subsistence, which payment is made from campaign funds as permitted by Government Code Section 89513, or which is a contribution, is not an honorarium or a gift.
- (d) Travel Provided By Official's Agency. A payment made for transportation and necessary lodging and subsistence, which payment is made by the agency of an official, is not an honorarium or a gift.
- (e) Travel In Connection With Bona Fide Business. A payment made for transportation, lodging, and subsistence, which payment is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code, is not an honorarium or gift unless the sole or predominant activity of the business, trade or profession is making speeches.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 86111, 87207 and 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 1-27-93; operative 2-26-93 (Register 93, No. 5).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

- 3. Amendment of section heading, first paragraph, subsections (a)(1)–(2), (a)(2)(B), (b), (d) and Note filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
- 4. Amendment of subsections (a)(1)–(2) and (b) filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43)
- Amendment of subsection (b)(2) filed 5-26-98; operative 5-26-98. Submitted
  to OAL for printing only pursuant to Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, Sacramento Superior
  Court, Case No. 51275 (1991) (Register 98, No. 22).

# § 18950.2. Travel: Exceptions for Local Elected Officers. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87207, 87302, 89501 and 89506, Government Code.

#### HISTORY

- 1. New section filed 1–27–93; operative 2–26–93 (Register 93, No. 5).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Repealer filed 7–25–95; operative 7–25–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

# § 18950.3. Travel in Connection With Speeches, Panels, and Seminars: Exception for All Filers.

Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

- 1. New section filed 1-27-93; operative 2-26-93 (Register 93, No. 5).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- 3. Change without regulatory effect amending section heading and NOTE filed 7–27–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 30).

# § 18950.4. Payments for Travel in Connection with Campaign Activities.

- (a) Except as provided in Section 18727.5, a payment made to an elected officer or candidate for his or her transportation, lodging, or subsistence is a gift unless the transportation, lodging, or subsistence provided to the elected officer or candidate is in "direct connection" with campaign activities, including attendance at political fundraisers.
- (1) Any payment made to an elected officer or candidate for his or her transportation, lodging, or subsistence, during the six month period prior to an election in which the elected officer or candidate is to be voted upon shall be considered "in direct" connection with campaign activities if the payment is for necessary transportation, lodging, or subsistence, used specifically for the purpose of the elected officer's or candidate's:
- (A) Participation in candidate forums, debates or similar voter gatherings at which he or she makes a speech; or
- (B) Attendance at meetings with campaign staff or political consultants to develop or implement campaign strategy.
- (2) A payment made to an elected officer or candidate for necessary transportation to, or lodging and subsistence at, an event described in subdivision (a)(1)(A) or subdivision (a)(1)(B), but not made within the six month period prior to the election in which the elected officer or candidate is being voted upon, shall be considered gifts unless it is clear from the surrounding circumstances that the payment is made directly in connection with campaign activities.
- (b) When a payment is made to an elected officer or candidate for his or her necessary lodging and subsistence or transportation in direct connection with attendance at a political fundraiser or an event listed in subdivision (a)(1)(A) or subdivision (a)(1)(B), which fundraiser event is conducted to benefit another elected officer or candidate, or to benefit a

committee as defined in Government Code Section 82013(a), the payment is a contribution to the officer, candidate, or committee benefitting from the fundraiser.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 82015 and 82028, Government Code.

#### HISTORY

- 1. Renumbering and amendment of former section 18228 to section 18950.4 filed 1–27–93; operative 2–26–93 (Register 93, No. 5).
- Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
- Change without regulatory effect amending section heading filed 7–18–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 29).

#### § 18951. Surplus Funds.

For purposes of Government Code section 89519:

- (a) Campaign funds raised after January 1, 1989, under the control of a candidate or elected officer shall be considered surplus campaign funds on the following dates:
- (1) Incumbent Candidates: The date on which an incumbent candidate leaves any elective office for which the campaign funds were raised, or, if the candidate is defeated for reelection, the end of the postelection reporting period following his or her defeat, whichever is later. An incumbent candidate who wishes to use funds for a future election must transfer those funds to a new committee for a future election no later than this date.
- (2) Non–Incumbent Defeated and Withdrawn Candidates: The end of the postelection reporting period following the election in which the candidate was defeated or from which the candidate withdrew. A defeated non–incumbent candidate or candidate who withdraws from an election who wishes to use funds for a future election must transfer those funds to a new committee for a future election no later than this date.
- (3) Deceased Candidates: Funds belonging to a candidate who dies while in office or while running for office shall become surplus on the earlier of either June 30 or December 31 following the candidate's death.
- (b) The "end of the postelection reporting period" means June 30 with respect to elections occurring in the first six months of the calendar year and December 31 for elections occurring in the latter six months of the calendar year.
- (c) Campaign funds are "raised" at the time the funds are received, as disclosed on the candidate's campaign statements pursuant to 2 Cal. Code Regs. section 18421.1.
- (d) Campaign funds raised on or before January 1, 1989, which have been commingled with campaign funds raised after January 1, 1989, are presumed to have been raised after January 1, 1989.
- (e) Except as provided by Government Code section 85315, campaign funds raised by: (1) a committee, other than a candidate controlled committee; (2) a candidate controlled ballot measure committee; or (3) a candidate on or before January 1, 1989, that are not commingled with funds raised after that date are not considered surplus funds for purposes of this section and are governed by Government Code sections 89511 through 89518 and 89520 through 89522.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 89519, Government Code.

#### HISTORY

- 1. New section filed 9–15–2003; operative 9–15–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 38). For prior history, see Register 95, No. 5.
- 2. Editorial correction of subsection (a)(1) (Register 2004, No. 29).
- 3. Amendment of subsections (a)(1)-(2) filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).

# § 18954. Gift Limit Adjustment. [Repealed]

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89504, 89505 and 89506, Government Code.

### HISTORY

- 1. New section filed 7-6-93; operative 7-6-93 (Register 93, No. 28).
- 2. Change without regulatory effect relocating section filed 11–17–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

- Amendment of subsections (a) and (b)(1), repealer of subsection (c), subsection relettering and amendment of newly designated subsection (c) filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
- Renumbering of former section 18954 to new section 18940.2 filed 10–23–96; operative 10–23–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

#### § 18960. Direct Personal Benefit Defined.

- (a) For purposes of Government Code section 89511(b)(3), an expenditure of campaign funds results in a direct personal benefit when, within six months of the expenditure and without the assistance of any intervening influence or interruption, the candidate or elected officer or member of his or her immediate family:
- (1) Realizes an increase in his or her income or assets, or a decrease in his or her expenses or liabilities, of more than \$200 from the expenditure; or
- (2) Actually makes personal use of an asset obtained as a result of the expenditure.
- (b) An expenditure of campaign funds does not result in a prohibited direct personal benefit if otherwise specifically permitted under any other provisions of Article 4 (commencing with Section 89510) of Chapter 9.5 of Title 9 of the Government Code, or interpretative regulations thereto.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 89511, Government Code.

#### HISTORY

- 1. Renumbering and amendment of former section 18580 to section 18960 filed 4–26–95; operative 4–26–95 pursuant to Government Code section 11343.4(d) (Register 95, No. 17). For prior history, see Register 90, No. 50.
- 2. Change without regulatory effect amending subsection (a)(1) filed 6–26–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).

# § 18961. Incidental Use.

- (a) For purposes of Government Code Sections 89516(e) and 89517(c), the use of any real property, appliance, equipment, or vehicle is incidental to its use for political, legislative, or governmental purposes only if all of the following apply:
- (1) The use occurs in conjunction with its use for a purpose which is directly related to a political, legislative, or governmental purpose;
- (2) The value of the use constitutes 5 percent or less of the total use of the item in any one calendar month; and
- (3) The value of the use does not exceed a fair market value of \$100 in any one calendar month.

NOTE: Authority cited: Section 83112, Gov. Code. Reference: Sections 89516(e) and 89517(c), Gov. Code.

# HISTORY

- 1. Change without regulatory effect renumbering former section 18951 to section 18961 filed 1–30–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 5).
- 2. Editorial correction of HISTORY 1 (Register 96, No. 13).

# Chapter 10. Auditing

#### HISTORY

 Sections 18910, 18913, 18914, 18915, and 18916 renumbered to sections 18991, 18992, 18993, 18994, and 18995, respectively (Register 95, No. 5). For prior history see Register 95, No. 30.

# § 18991. Audits of Campaign Reports and Statements of Local Candidates and Their Controlled Committees.

- (a) The Commission shall select local candidates and their controlled committees for audit by the Franchise Tax Board pursuant to Government Code section 90001(i) and this section.
- (b) Local candidates and committees shall be selected for audit each odd-numbered year, at the same time that candidates for the Legislature in a direct primary or general election are selected for audit, or as soon as feasible thereafter.
- (c) The Commission shall select a total of 20 local jurisdictions to be audited, in accordance with the schedules in subdivisions (d), (e), (f) and

(g). The Commission shall then determine, by random selection, the order in which the Franchise Tax Board shall conduct the audits of the 20 local jurisdictions.

If the Commission receives notice that the Franchise Tax Board is able to conduct additional audits of local jurisdictions with the funds available during a two-year cycle, the Commission shall select an additional 20 local jurisdictions to be audited, in accordance with the schedules in subdivisions (d), (e), (f) and (g). The Commission shall determine, by random selection, the order in which the Franchise Tax Board shall conduct the additional audits.

If the Franchise Tax Board is unable to audit all of the jurisdictions selected with the funds available during a two—year audit cycle, the remaining jurisdictions shall be subject to random audit during the next audit cycle on the same basis as any other jurisdiction of the same type.

(d) A total of 40 percent of the jurisdictions selected for audit shall be counties, including any city and county. When a county is selected for audit, the audit shall include primary election candidates for county office, as defined in Elections Code section 34, and general election candidates for county office, as defined in Elections Code section 34, at the last county primary and general elections held prior to the audit selection. Those candidates who file pursuant to Government Code section 84206 shall not be audited under this provision.

Counties shall be grouped by population size, as determined by the most recent population estimates published by the Department of Finance, and the total number of jurisdictions selected for audit from each group, by random selection, shall be:

- (1) Counties with a population of 700,000 or more—15 percent of the total jurisdictions selected.
- (2) Counties with a population of at least 150,000 but less than 700,000—15 percent of the total jurisdictions selected.
- (3) Counties with a population of less than 150,000—10 percent of the total jurisdictions selected.
- (e) A total of 40 percent of the jurisdictions selected for audit shall be cities, not including any city and county. When a city is selected for audit, the audit shall include candidates for city elective office at the last general municipal election held prior to the audit selection. Those candidates who file pursuant to Government Code section 84206 shall not be audited under this provision.

Cities shall be grouped by population size, as determined by the most recent population estimates published by the Department of Finance, and the total number of jurisdictions selected for audit from each group, by random selection, shall be:

- (1) Cities with a population of 100,000 or more—15 percent of the total jurisdictions selected.
- (2) Cities with a population of at least 25,000 but less than 100,000—15 percent of the total jurisdictions selected.
- (3) Cities with a population of less than 25,000—10 percent of the total jurisdictions selected.
- (f) A total of 10 percent of the jurisdictions selected for audit shall be school districts and community college districts. These districts shall be selected by random selection. When a school district or community college district is selected for audit, the audit shall include candidates for governing board at the last regular school or community college district election held prior to the audit selection. Those candidates who file pursuant to Government Code section 84206 shall not be audited under this provision.
- (g) A total of 10 percent of the jurisdictions selected for audit shall be special districts, not including school and community college districts. These districts shall be selected by random selection. When a special district is selected for audit, the audit shall include all candidates for governing board of the district at the last general district election held prior to the audit selection. Those candidates who file pursuant to Government Code section 84206 shall not be audited under this provision.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 90001(i), Government Code.

#### HISTORY

- 1. Change without regulatory effect renumbering former section 18910 to section 18991 filed 1–30–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 5).
- 2. Editorial correction of HISTORY 1 (Register 95, No. 13).
- 3. Amendment of subsections (d), (e), (f) and (g) filed 2–8–99; operative 2–8–99 pursuant to Government Code section 11343.3(d) (Register 99, No. 7).
- 4. Amendment filed 2–18–2003; operative 2–18–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 8).

# § 18992. Terms Used in Section 90001.

(a) The terms "committee... primarily in support of his or her candidacy," as used in Government Code Section 90001(b), "committee... primarily supporting his or her candidacy," as used in Government Code Section 90001(c) and (d) "committee primarily supporting or opposing a candidate," as used in Government Code Section 90001(f), and "committee primarily supporting or opposing a state candidate," as used in Government Code Section 90001(h) mean any committee (other than a controlled committee and other than a committee defined in Government Code Section 82013(c)) which has made more than one half of its expenditures on behalf of any one candidate for the period to be audited pursuant to Government Code Section 90002(c).

(b) The term "committee . . . primarily in support of or in opposition to a state measure or state measures" as used in Government Code Section 90001(g) means any committee which has made more than one half of its expenditures in support of or against one or more state ballot measures for the period to be audited pursuant to Section 90002(c).

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 90001, Government Code.

#### HISTORY

- 1. Change without regulatory effect renumbering former section 18913 to section 18992 filed 1–30–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 5).
- 2. Editorial correction of HISTORY 1 (Register 95, No. 13).

#### § 18993. Contain In Detail.

The term "contain in detail" as used in Government Code Section 90004 means that the report of the Franchise Tax Board shall include specific findings of noncompliance, if the Franchise Tax Board determines that the noncompliance is material.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 90000, 90001, 90004 and 90007, Government Code.

## HISTORY

- 1. Change without regulatory effect renumbering former section 18914 to section 18993 filed 1–30–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 5).
- 2. Editorial correction of HISTORY 1 (Register 95, No. 13).
- 3. Repealer and new section filed 2–8–99; operative 2–8–99 pursuant to Government Code section 11343.3(d) (Register 99, No. 7).

# § 18994. Auditing and Investigations.

Audits and investigations conducted by the Franchise Tax to Government Code Sections 90000, et seq. shall be made as follows:

- (a) To the extent applicable, in accordance with generally accepted auditing standards as prescribed by the authoritative bodies of the accounting profession; and
- (b) To the extent necessary, using other tests of accounting records and auditing procedures appropriate under the circumstances of each audit or investigation.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 90000, et seq., Government Code.

#### **HISTORY**

- 1. Change without regulatory effect renumbering former section 18915 to section 18994 filed 1–30–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 5).
- 2. Editorial correction of HISTORY 1 (Register 95, No. 13).

# § 18995. Standards and Guidelines for Auditing Statements and Reports.

In addition to the requirements of 2 Cal. Code Regs., Section 18994, audits conducted pursuant to Government Code Section 90001 shall meet the following standards:

- (a) General.
- (1) The audit is to be performed by a person or persons having adequate technical training and proficiency for the tasks required.
- (2) In all matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent mental attitude.
- (3) Due professional care is to be used in conducting the audit work and in preparing the report.
  - (b) Field Work.
  - (1) The work is to be adequately planned.
  - (2) Field auditors and assistants are to be properly supervised.
- (3) An evaluation is to be made of the system of internal control to assess the extent it can be relied upon in the determination of the nature and extent of the audit tests to be applied.
- (4) Sufficient, competent evidence, including source documents, is to be obtained through inspection, observations, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the filing under examination.
- (5) A review is to be made of compliance with legal and regulatory requirements.
  - (c) Reporting.
- (1) At the completion of every audit, written audit reports are to be submitted to the Fair Political Practices Commission and to officials listed in Government Code Section 90004 as well as to the filer and be made available for public inspection.
- (2) Reports are to be issued on or before the dates specified by law or regulation and, in any event, as promptly as possible to make the information available for timely use by the Fair Political Practices Commission and other enforcement agencies, as well as by the filer and the public.
  - (3) The content of each report will include:
  - A. A clear explanation of the scope of the audit.
- B. An expression of the auditor's opinion on whether the information contained in the filings is presented fairly and in conformity with the provisions of the Act and related rules and regulations.
- C. Explanations of instances of material noncompliance with legal or other regulatory requirements.
- D. Relevant responses made by filers and, if appropriate, the auditor's comments on those responses.
- (4) Report preparation, review and processing procedures should be applied to produce reports that contain no omissions of material findings or errors of fact, logic or reasoning.
- (5) Findings shall be presented in an objective and unbiased manner and should include sufficient information to provide readers with proper perspective.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 90000, 90001, 90004 and 90007, Government Code.

# HISTORY

1. Change without regulatory effect renumbering former section 18916 to section

- 18995 filed 1–30–95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 5).
- 2. Editorial correction of HISTORY 1 (Register 95, No. 13).
- 3. Editorial correction of subsection (c)(3)D. (Register 96, No. 43).
- 4. Change without regulatory effect amending section heading and first paragraph filed 2–23–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 9).

### § 18996. Scope of Audits and Investigations.

- (a) Government Code Section 90002(c) states that the audit and investigation shall cover all campaign statements and reports filed for the primary and general or special or runoff elections, and any previous campaign statement or report filed pursuant to Section 84200 or 84200.5 since the last election for that office. For purposes of Section 90002(c), the audit or investigation shall not include those campaign statements or reports filed in conjunction with an election for any other office.
- (b) Nothing in subsection (a) shall be interpreted to act as a limitation on the Franchise Tax Board or the Commission in undertaking a discretionary audit as set forth in Government Code Section 90003.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 90002 and 90003, Government Code.

#### HISTORY

1. New section filed 2–8–99; operative 2–8–99 pursuant to Government Code section 11343.3(d) (Register 99, No. 7).

# § 18997. Audits of Campaign Reports and Statements of Candidates for the Board of Administration of the Public Employees' Retirement System.

The Commission shall audit a candidate for an election to the Board of Administration of the Public Employees' Retirement System if the candidate receives contributions aggregating \$5,000 or more for that election.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 90001, Government Code.

#### HISTORY

- 1. New section filed 12–21–2000. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2000, No. 51).
- Amendment filed 9–12–2002 as a change without regulatory effect. Submitted
  to OAL for filing pursuant to Fair Political Practices Commission v. Office of
  Administrative Law., 3 Civil C010924. California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not
  subject to procedural or substantive review by OAL) (Register 2002, No. 37).
- 3. Repealer and new section filed 4–9–2008; operative 5–9–2008. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 15).

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# Barclays Official

# CALIFORNIA CODE OF REGULATIONS

# Title 2. Administration

Division 7. Secretary of State

Vol. 3



# **Division 7.** Secretary of State

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§ 2062				§ 20714.	Proposed Ballot Designations
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Article 3.	The Secretary of State	470.1			Code § 13107, Subdivision (a)(3).
§ 2063				§ 20715.	Proposed Ballot Designations
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§ 2063				§ 20719.	Service of Legal Process Regarding
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# Division 7. Secretary of State

# Chapter 1. Voter Registration

# Article 1. Access to Voter Registration Information

#### § 19001. Definitions.

As used in this Article, the following words have the following meanings:

- (a) "Person" includes any person, firm, association, organization, partnership, business trust, corporation or company.
- (b) "Registration information" means all information maintained in the general index to the affidavits of registration whether set forth on electronic data processing tapes or tabulating cards pursuant to Elections Code Section 607 or in indices of registered voters pursuant to Elections Code Section 607 and includes all information partially or solely derived from the aforementioned information, whether displayed, transmitted or stored in any format or on any media whatsoever.
- (c) "A registration record" means the information or any portion thereof, set forth in an affidavit of registration executed by any person pursuant to Division 1, Chapter 2 of the Elections Code.
- (d) "Source Agency" means Secretary of State or local agency or person deputized by the state or local agency which maintains registration information.

NOTE: Authority cited: Section 12172, Government Code. Reference: Section 607, Elections Code.

#### HISTORY

- 1. New Division 7, Chapter 1, Article 1 (Sections 19001–19009) and Article 2 (Sections 19050–19059) filed 5–28–76; effective thirtieth day thereafter (Register 76, No. 22).
- 2. Amendment to section and NOTE filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

#### § 19002. Use of Registration Information; Limitations.

Registration information obtained by any person from a source agency shall be used solely for election and governmental purposes.

#### § 19003. Permissible Uses.

Permissible uses of information obtained from a source agency shall include, but shall not be limited to, the following:

- (a) Using registration information for purposes of communicating with voters in connection with any election.
- (b) Sending communications, including but not limited to, mailings which campaign for or against any candidate or ballot measure in any election.
- (c) Sending communications, including but not limited to, mailings by or in behalf of any political party; provided however, that the content of such communications shall be devoted to news and opinions of candidates, elections, political party developments and related matters.
- (d) Sending communications, including but not limited to, mailings, incidental to the circulation or support of, or opposition to any recall, initiative, or referendum petition.
- (e) Sending of newsletters or bulletins by any elected public official, political party or candidate for public office.
- (f) Conducting any survey of voters in connection with any election campaign.
- (g) Conducting any survey of opinions of voters by any government agency, political party, elected official or political candidate for election or governmental purposes.
- (h) Conducting an audit of voter registration lists for the purpose of detecting voter registration fraud.

- (i) Soliciting contributions or services as part of any election campaign on behalf of any candidate for public office or any political party or in support of or opposition to any ballot measure.
- (j) Any official use by any local, state, or federal governmental agency.

#### § 19004. Impermissible Uses.

The following uses of registration information obtained from a source agency shall be deemed other than for election and governmental purposes:

- (a) Any communication or other use solely or partially for any commercial purpose.
- (b) Solicitation of contributions or services for any purpose other than on behalf of a candidate or political party or in support of or opposition to a ballot measure.
- (c) Conducting any survey of opinions of voters other than those permitted by Sections 19003(f) and (g).

# § 19005. Prior Written Authorization.

No person who obtains registration information from a source agency shall make any such information available under any terms, in any format, or for any purpose, to any person without receiving prior written authorization from the source agency. The source agency shall issue such authorization only after the person to receive such information has executed the written agreement set forth in Section 19008.

### § 19006. Charges; Deposits.

The source agency may designate the price which is to be charged for the use of such registration information. The source agency may also require the payment of a deposit or the execution of a bond to cover the costs of supplying such registration information.

# § 19007. Penalties.

Every person, who directly or indirectly obtains registration information from a source agency, shall be liable to the State of California, as a penalty for any use of said registration information which is not authorized by Section 607 of the Elections Code and the regulations promulgated pursuant thereto, for an amount equal to the sum of  $50\phi$  multiplied by the number of registration records which such person used in an unauthorized manner. Unauthorized use by any applicant of any portion of the information obtained pursuant to this Chapter shall raise a presumption that all such information obtained by such applicant was so misused. Illustration: X Data Corp. obtains registration information from a source agency and uses this information to address a commercial mailing to 10,000 voters. Under the provision of this section, X Data Corp. is obligated to pay the State of California the sum of \$5000, which constitutes the sum of  $50\phi$  multiplied by 10,000, the number of registration records which were used in an unauthorized manner.

#### HISTORY

1. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

### § 19008. Application.

Every applicant shall execute and deliver to the source agency the following application:

ALTLICA	TION
Name of Applicant:  Address of Applicant:	
	(If committee, state
name of beneficiary)	

The above–named applicant, hereby applies to the Secretary of State of the State of California, directly or through a source agency, for:
\_\_\_\_\_\_\_\_electronic data processing tapes

\_\_\_\_\_ indices of registered voters

\_\_\_\_\_ pages of addressograph lists

The applicant hereby agrees that the aforementioned information set forth in affidavits of registration of voters and any information derived from said tabulating cards, electronic data processing tapes and indices

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(hereinafter collectively referred to as "registration information") will be used only for election or governmental purposes, as defined by Title 2, Division 7, Article 1, Section 19003 of the California Administrative Code.

The applicant further agrees not to sell, lease, loan or deliver possession of the registration information, or a copy thereof, or any portion thereof, to any person, organization or agency without receiving written authorization to do so from the Secretary of State or from the source agency.

Subject to provisions of Title 2, Division 7, Article 1, Sections 19001 through 19007 of the California Administrative Code, the applicant agrees to pay the State of California, as compensation for any unauthorized use of each individual's registration information, an amount equal to the sum of 50¢ multiplied by the number of times each registration record is used by the applicant in an unauthorized manner.

Applicant or Agent for Applican
Title

#### § 19009. Submissions to Secretary of State.

The Secretary of State may require that the applicant submit to the Secretary of State a copy of all mailings conducted by the applicant pursuant to this Chapter.

# Article 2. Postal Registration of Voters

#### **Foreword**

These regulations are promulgated under authority vested in the Secretary of State by the California Legislature in Chapter 704 of the 1975–76 Regular Session. They may be cited as the Voter Registration Regulations.

# § 19050. Voter Registration Card; Format.

The multipart voter registration card mandated by Elections Code Sections 506, 102 and 507 shall be substantially in the format set forth in Section 19055.

NOTE: Authority cited: Section 506, Elections Code. Reference: Sections 506, 102, 507, Elections Code.

#### HISTORY

1. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

#### § 19050.5. Place of Execution.

An elector's registration as a voter is valid notwithstanding the failure to complete the place of execution portion of the Voter Registration Card. It shall not be inferred from this regulation that failure to complete other portions of the Voter Registration Card necessarily invalidates or does not invalidate that elector's registration as a voter.

NOTE: Authority cited for Sections 19050.5–19050.7: Statutes 1975, Chapter 1119, Section 4. Reference: Sections 19055(a)(1) and 19055(a)(3), Title 2, California Administrative Code; Section 500, Elections Code.

#### History

- 1. New section filed 10–15–76 as an emergency; effective upon filing (Register 76, No. 42).
- 2. Repealed by operation of Section 11422.1(c), Government Code (Register 77, No. 21).
- 3. New section filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

# § 19050.6. Requirements for Valid Registration.

In the event that the county clerk receives an affidavit of registration that does not include portions of the information for which space is provided, the county clerk or registrar of voters shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be assumed that none exists.

- (b) If no occupation is shown, it shall be presumed that the person is unemployed or has no occupation.
- (c) If no party affiliation is shown, it shall be assumed that the registrant has "declined to state" a party affiliation.
- (d) If the year of birth is omitted, it shall be presumed that the year of birth was eighteen years or more prior to the date of the next succeeding election, in accordance with the voter's statement under penalty of perjury that he or she will be eighteen years of age at the time of the next election.
- (e) If no prior registration is shown, it shall be presumed that the person is not registered to vote in California. An elector's affidavit of registration as a voter shall be valid notwithstanding the failure to complete the information to which the above presumptions apply, absent evidence rebutting the presumption.
  - (f) If the date of execution is omitted but:
- (1) the affidavit is received in the office of the county clerk, on or before the 29th day prior to the election; or
- (2) the registration affidavit is postmarked on or before the 29th day prior to the election and arrives in the office of the county clerk not later than four days after the 29th day, it shall be presumed that the affidavit was executed on or before the 29th day prior to the election.

#### HISTORY

- 1. New section filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21)
- 2. New subsection (f) filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).

#### § 19050.7. Receipt of Affidavit of Registration.

Except as otherwise provided herein, a registration affidavit delivered to the county clerk shall be deemed to have been received for all purposes:

- (a) On the date it actually arrives in the office of the county clerk authorized to receive registration affidavits, if subdivision (b) does not apply; or
- (b) On the 29th day prior to an election scheduled to be held in the county in which the affiant resides, provided that the registration affidavit was executed by the voter on or before said 29th day and arrives by mail in the office of the county clerk to whom it is addressed not later than four days after said 29th day.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 301 and 305, Elections Code.

#### HISTORY

- New section filed 5-20-77; effective thirtieth day thereafter (Register 77, No. 21).
- 2. Amendment filed 6–30–77 as an emergency; effective upon filing (Register 77, No. 27).
- 3. Certificate of Compliance filed 10-26-77 (Register 77, No. 44).
- 4. New subsection (b)(3) filed 9-27-78 as an emergency; effective upon filing (Register 78, No. 39).
- 5. Expired by own terms (Register 79, No. 38).
- New subsection (b)(3) filed 9-21-79 as an emergency; effective upon filing (Register 79, No. 38). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 1-19-80.
- 7. Expired by own terms (Register 80, No. 15).
- 8. Amendment filed 6–8–84; effective thirtieth day thereafter (Register 84, No. 23).

# § 19050.8. Registration Affidavit: Secretary of State Form.

(a) Registration affidavits printed by the Secretary of State with the mailing address of the Secretary of State are deemed to have been received by the county clerk upon arrival in the office of the Secretary of State in the same manner as if received by a county clerk under Elections Code Sections 301 and 311.

For affidavits referred to in subsection (a) above:

(b) Within one working day, the Secretary of State shall transmit the affidavit to the clerk of the county of affiant's residence, as stated on the affidavit.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 301 and 311, Elections Code.

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#### HISTORY

- New section filed 4-11-80 as an emergency; effective upon filing (Register 80, No. 15). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 8-10-80.
- Certificate of Compliance transmitted to OAL 8-7-80 and filed 8-20-80 (Register 80, No. 34).

#### § 19051. Provision by Secretary of State.

#### HISTORY

- 1. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).
- 2. Amendment filed 9–16–77 as an emergency; effective upon filing (Register 77, No. 38).
- 3. Certificate of Compliance filed 1-6-78 (Register 78, No. 1).
- 4. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

#### § 19052. Official Affidavits.

Only those affidavits of registration provided by the Secretary of State through the county clerks shall be used for the registration of voters pursuant to Elections Code Section 301. Such voter registration cards shall not be altered, defaced, or changed in any way, other than by the insertion of a mailing address and the affixing of postage, if mailed, or as otherwise specifically authorized by the Secretary of State, prior to distribution to prospective registrants, nor shall the affidavit portion of the voter registration cards be marked, stamped, or partially or fully completed by anyone other than an elector attempting to register to vote or by another person assisting such elector after being requested by such elector to assist in completing the affidavit.

#### HISTORY

- 1. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21)
- 2. Amendment filed 9–16–77 as an emergency; effective upon filing (Register 77, No. 38).
- 3. Certificate of Compliance filed 1-6-78 (Register 78, No. 1).

## § 19053. Ninety Day Request Period for Shipments.

The forms prescribed by Elections Code Sections 500, 506, and 508 shall be supplied by the Secretary of State to the county clerks as requested by the clerks ninety days prior to the desired date of receipt.

#### HISTORY

1. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

#### § 19054. Quantities.

#### HISTORY

- 1. Amendment filed 6–3–76 as an emergency; designated effective 6–27–76 (Register 76, No. 22).
- 2. Reinstatement of section as it existed prior to emergency amendment filed 6-3-76, by operation of Section 11422.1(b), Government Code (Register 77, No. 21).
- 3. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).
- 4. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

## § 19055. Voter Registration Card.

- (a) Postal Forms
- (1) Affidavit of Registration Portion

4	PRINT IN INK-ESCRIBA EN LETRA DE MOLDE EN TINTA			
OF-ESTADO DE CALIFORNIA TY OF-CONDADO DE , CLARA	1 Optional - Opcional - Mr/Sr - Mrs/Sra - Miss/Sra Name - Nombre (first - nombre) (middle - segundo) (la	ta [] Ms est-apellido)	less than I nor more than 14 yrs. § 126 Penal Code, 2015.5 Civil Proc.	AVISO - El juramento en falso es costigable con encarcalamiento en la prisón del estado por no menos de una y no más de catorce oños. § 126 Penal Code, 2015.5 Civ. Proc.
DADO	2 Residence - Damicilio (No.) (Street - Calle) (Apt. No Núi	m. del Apt.)	I am a citizen of the United States and will be at least 18 years of age at the time of the next election. I am not imprisoned or on parale for the can-	Soy ciudadano de los Estados Unidas y tendre pas lo menos 18 años de edad para la próxima elección. No estoy preso e bajo el regimen de
ESTADC 	3 City - Ciudad 4 Zip Code	- Zona Postal	viction of a felony which disqualifies me from voling. I certify under penalty of perjury that the information on this affidavit is true and correct.	libertod provisional por un crimen que me prive del derecho de votar. Juro bajo pena de falso juramento que la información en esta Declaración Jurada
Ţōặ	5 If no street address, describe location of residence: (cross st			es verdadera y correcto.
STATE OF COUNTY SANTA C	box, section, range, township, etc. Si la calle no tiene n la lacalidad: (Calles que atraviesan, etc.)	úm. describa	13 Signature – Firma	
	6 Mailing Address (if different) - Direction Postal (si diferente)	(Rte or Box)	Date — Fecha Subscribed in C	ounty of – Firmada en Candado de
	City - Ciudad Zip Code -	Zona Postal	George A. Mann, Registrar of Vote Deputy  Empadronador	ers - Recorder
		and Freedom	Date - Fecha Acct.	No. Núm. de Cuenta 15
	Republican Decline to State - Se niega a declarar		<u> </u>	بنيس بسيال بيسياسي
	Other - Otro		STRATION PORTION: PORCIÓN DE PRE-E	MPADRONAMIENTO:
Ĭ	8 Date of Birth Fecha de nacimiento 9 State or country of birth Estado o país de nacimiento	¿Esta ud. e	urrently registered to vote? Impadronado para votar actualmente? 1 in below Si afimativo, rellene los esp	Yes—Sí No
Ĕ	mo - mes / day - día / yr - año	NAME - NO	MBRE	
₹ 4 5	10 Occupation - Profesión u oficio	L		
MEN		Former Addre	ess - Dirección Anterior:	
o z z	Telephone (Optional) Falifeses (Opcional)	City - Ciudae	d County	- Condado
APPIDAVIT OF I DECLARACIÓN DE EMPADRON	Social Security No. (Optional) Núm. de regere social (Opcional)	Political Part	y — Partida Político	A 9 9 9 9 9 9
AFFIC DECL	12	<b> </b>		

(2) Reverse Side of Affidavit.

FIRST CLASS PERMIT NO.

BUSINESS REPLY MAIL
NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

POSTAGE WILL BE PAID BY

March Fong Eu, SECRETARY OF STATE

C/O COUNTY CLERK
Address
City, State Zip Code

(3) Instructional Portion (English).

#### INSTRUCTIONS

PLEASETYPE OR PRINT IN INK: Read instructions and information carefully. Only your "signature" should be written; all other information should be printed or typed.

OPTIONAL: You will not be denied your right to register if you fail to give information in shaded area.

- Print your complete name. A prefix (Mr., Mrs., Miss, Ms.) is not required, but if used should be placed in the shaded areas.
- Print your last complete residence address including City, State, and Zip Code. Give the street, space, or slip number. Enter the street name to include North, South, East, West, if appropriate, and indicate whether it is called ave., blvd., drive, place, street, road, lane, or circle, etc.
- IMPORTANT: Enter complete mailing address (outside USA) to include all pertinent information required for mailing.
- Enter the name of the U.S. state (or foreign country) where you were born.
- 5. Enter your complete date of birth.
- Print your specific occupation, such as: nurse, carpenter, homemaker, etc.
- Place on X in the bax before the Qualified Political Party with which you choose to affiliate. In a direct primary election you will receive the ballot of the Qualified Political Party which you have selected.

- If you do not wish to affiliate with a qualified political party you may place an X before the words "Decline to State," or you may mark the box before "Other" and enter the name of any unqualified political party. If you do not affiliate with a qualified political party, you will not receive a ballot at the direct primary election, but will receive a ballot for the general election.
- After reading the warning and statement, sign your name under penalty of perjury, and enter the date.
- If you require assistance, and anyone helps you in completing the affidavit, have that person sign and date the affidavit below your signature.
- Enter all identification numbers issued on valid passport or card of identity and registration issued under authority of Secretary of State.

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Instructional Portion (Spanish).

#### INSTRUCCIONES

POR FAVOR ESCRIBA A MÁQUINA O EN LETRA DE MOLDE EN TINTA: Lea las instrucciones e información con cuidada. Sólo su firma debe estar escrita.

PORCIÓN DE PRE-EMPADRONAMIENTO: Si Ud. está actualmente empadronado para votar en California y está a punto de cambiar su nombre, domicilio o afiliación política, rellene la porción de pre-empadronamiento en la cual actualmente está empadronado.

OPCIONALES: No se le negará el derecho a empadronarse si Ud. no da la información pedida en los espacios obscurecidos. Si Ud. da su número de teléfono este se pondrá en el lugar de votación el día de la elección.

INSTRUCCIONES ESPECIALES: Alguna información solicitada incluida en la declaración arriba está bien clara, sin embargo, abajo se incluyen algunas instrucciones especiales para aclarar aquella materia que requiere mayores explicaciones.

- Escriba en letra de molde su domicilio completo dando el número del espacio o la colle, Norte, Sur, Este, Oesta, (si es apropiado); nombre de la calle, e indique avenue, boulevord, drive, place, street, road, lane, o circle, etc.
- IMPORTANTE: Describa la ubicación de su residencia con los nombres de las calles en las esquinas más cercanas, o los números de Township, Range y Section.
- 7. Ponga una X en el espacio precedente del Partido Político con el cual Ud. quiere afiliarse. Puede usted escribir en letra de molde el nombre de un partido 'desautorizado' (no calificado) después de "Otro" o "se niega a declarar". Sin embargo no podrá votar en la Balota de Partido política Calificado en ninguna Elección Primaria a menos que declare usted su afiliación con ese partido en la Declaración Jurodo.
- 11. Su teléfono y número de seguro social son opcionales. Su número de seguro social se solicita por la autoridad de la sección 310(a) del Código de Elecciones de Colifornia, y lo usarán los oficiales electorales únicamente para mantener la exactitud y la integridad de los archivos del registro.
- Después de terminar la Declaración Jurada (y la Porción Pre-Empodronamiento, si es aplicable) firme y dé la fecha y lugar (el condado) de ejecución.
- Si alguien le ayuda a completar esta Declaración Jurada dicha persona debe firmar y fechar la Declaración Jurada debajo de la firma de Ud.
- Ponga una X en el espacio precedente si necesito ayuda en la caseta de votación.

(4) Informational Portion

# REGISTER TO VOTE

#### VOTER INFORMATION

- You must be a citizen of the United States and 18 years of age or over to vate.
- In order to vote in any specific election you must be registered 29 days prior to that election. (Exception: New California residents may vote for President and Vice President if they register on or before the seventh day prior to a Presidential election.)
- You should not consider yourself registered until you receive a Voter Notification Card by return mail. Your registration will become effective upon receipt by the County Clerk or Registrar of Voters. If you register in person, you may immediately consider yourself registered.
- If you register by mail and do NOT receive a Voter Notification Card within two weeks, call the number listed below.
- If you are unable to go to your polling place on election day, contact your County Clerk or Registrar to request an Absent Voter Ballot.

Telephone:

# INFORMACIÓN PARA EL VOTANTE

- Para votar Ud. debe ser ciudadano de los Estados Unidos y tener 18 años de edad o más.
- Para votar en una elección determinada Ud. debe de haberse empadronado 29 días antes de la elección. (Excepción: Los residentes nuevos en California pueden votar por el presidente y el vicepresidente si se empadronaron el séptimo día o antes de la elección presidencial.)
- Usted no puede considerarse empadronado hasta que usted reciba una Tarjeta de Notificación al Votante por correo. Su empadronamiento esta efectivo al acuso de recibo por el/la Secretario(a) del Condado o Registrante de Votantes. Si usted se empadrona en persona, inmediatamente puede considerarse empadronado.
- Si Ud. se empadrona por correo y NO recibe una Tarjeta de Notificación al Votante dentro de dos semanas, llame al número indicado abajo.
- Si no puede ir a la caseta de votación el día de la elección, comuniquese con el/la Secretario(a) del Condado o Empadronador para solicitar una Balota de Votante Ausente.

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Teléfono:

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(5) Reverse Side of Spanish Instructions (sent to voter upon verbal or written request).

COUNTY	CLEDY	ADDRESS

INDICIA

FOR VOTER ADDRESS

- (b) Deputy Registrars' Forms.
- (1) Affidavit of Registration Portion.

<b>a</b> .	PRINT IN INK-ESCRIBA EN LETRA DE MOLDE EN TINTA			
ALIFORNI DE	Optional Opcional Mr/Sr Mrs/Sra Miss/Sra Name - Nombre (first - nombre) (middle - segundo) (la	st - apellido)	imprisonment in State prison of not less than I nor more than 14 yrs. § 126 Penal Code, 2015.5 Civil Proc.	AVISO – El juramento en falso es costigable con encarcelamiento en la prisón del estado par no menos de una y no más de catorce años. § 126 Penal Code, 2015.5 Civ. Proc.
DADO	2 Residence - Damicilia (No.) (Street - Calle) (Apt. No Nún	n. del Apt.)	will be at least 18 years of age at the time of the next election. I am not	Soy ciudadano de los Estados Unidos y tendre pos lo menos 18 años de edad para la práxima elección. No estoy preso a bajo el regimen de
ESTADO F CON	3 City - Ciudod 4 Zip Code	- Zona Postal	viction of a felony which disqualifies me from voting. I certify under penalty of perjury that the information on this	libertod provisional por un crimen que me prive del derecho de votar. Jura bajo pena de falso juramento que la información en esta Declaración Jurada
STATE OF—ESTADO DE CALIFORNIA COUNTY OF—CONDADO DE SANTA CLARA	5 If no street address, describe location of residence: (cross st box, section, range, township, etc. Si la calle no tiene no la localidad: (Calles que atraviesan, etc.)		13 Signature – Firmo	es verdadera y correcto.
	6 Mailing Address (if different) - Dirección Postal (si diferente)	(Rie or Box)	Date - Fecha Subscribed in Co	ounty of – Firmodo en Condado de
	City - Ciudad Zip Code -	Zona Postal	George A. Mann, Registrar of Vote Deputy— Empadronador	rs - Recorder
	7 Political Party - Partido Política (Check One - Indique uno)  American Independent Democratic Peace of Republican Decline to State - Se niega a declarar	and Freedom	Date - Fecha Acct,	No. Núm. de Cuerda 15
	Other - Oiro	PRIOR REGIS	TRATION PORTION: PORCIÓN DE PRE-EI	MPADRONAMIENTO:
	8 Date of Birth 9 State or country of birth	Are you cu	rrently registered to vate?	
REGISTRATION—I JURADA	Fecha de nacimiento Estado o país de nacimiento		npadronado para votar actualmente? in below — Si afimativo, reliene los espi	Yes—Sí No
₹	ma - mes / day - día / yr - aña	NAME - NOM	IBRE	
EAE	10 Occupation - Profesión v oficio			<u> </u>
		Former Addres	ss – Dirección Anterior:	
O NO NO	11] Telephone (Optional) Feldface (Optional)	City - Civdad	County -	- Condado
AFFIDAVIT OF I	Social Security No. (Optional) Núms, de segare social (Opcional)	Political Party	— Partida Político	A 9 9 9 9 9
AFFIC DECL DE E	12   1 prefer election materials in English   Prefiero materiales electorales en español			

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(2) Informational and Stub Portions,

#### VOTER INFORMATION

#### IMPORTANT INFORMATION

In order to vote you must be 18 years of age, a citizen, and not in prison or on parole for the conviction of a felony.

You must be registered 29 days before any election to vote

If you register in person, your registration is effective immediately.

If you do NOT receive a Voter Notification Card within two weeks of registering, call (805) 861-2621.

#### INFORMACION IMPORTANTE

Para votar, Ud. debe tener 18 años de edad, ser ciudadano, y no estar preso ni en libertad provisional por haber sido sentenciado por un crimen de un delito grave.

Debe estar empadronado 29 días antes de la elección para poder votar.

Si Ud. se empadrona en persona, inmediatamente puede considerarse empadronado.

Si Ud. NO recibe una tarjeta de Notificación de Votante dentro de dos semanas, llame al (805) 861-2621.

Name – Nombre			Address – Domici	lio	
City — Ciudad	·	Zip Co	ode – Zona Postal	County - Condado	)
Political Affiliation –	Afiliación Política	Signature — Firma		<u> </u>	Date – Fecha
Date – Fecha	Deputy - De	legado Empadronad	or	Acct. No. Núm de cuenta	A 9 9 9 9 9

# § 19056. Card Dimensions.

Dimensions of voter registration card shall be 5" x 8" x .007."

#### § 19057. Reporting Requirement.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 500, 506 and 508, Elections Code.

### HISTORY

1. Repealer filed 6-8-84; effective thirtieth day thereafter (Register 84, No. 23).

#### § 19058. Voter Notification Card.

NOTE: Authority cited: Section 505 Elections Code. Reference: Sections 504 and 505, Elections Čode.

#### HISTORY

1. Repealer filed 6-8-84; effective thirtieth day thereafter (Register 84, No. 23).

#### § 19059. Languages.

The forms prescribed in Section 19055 shall be printed in the following languages:

- (a) Monolingual English versions
- (b) Bilingual versions
- (1) English-Spanish
- (2) English-Chinese

#### HISTORY

- 1. Amendment filed 6-3-76 as an emergency; designated effective 6-27-76 (Register 76, No. 22)
- 2. Amendment refiled 6-30-77 as an emergency; effective upon filing (Register 77, No. 27).
- 3. Certificate of Compliance filed 10-26-77 (Register 77, No. 44).

# Article 3. County Programs to Identify and **Register Qualified Electors**

# § 20000. General.

All counties shall design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote, hereinafter referred to as outreach programs.

NOTE: Authority cited for Article 3 (Sections 20000-20006): Section 202, Elections Code. Reference: Section 202, Elections Code.

#### HISTORY

- 1. New Article 3 (Sections 20001-20007, not consecutive) filed 9-24-76 as an emergency; effective upon filing (Register 76, No. 39). 2. Article 3 (Sections 20000–20006) refiled 9–28–76 as an emergency; effective
- upon filing. Certificate of Compliance included (Register 76, No. 40).

# § 20001. Minimum Requirements.

As a minimum, each county's outreach program shall contain the following components which shall be described in an outreach program

- (a) Consultation. Each program shall include systematic effort by the clerk to consult on a continuing basis all persons who exhibit interest and special knowledge in any outreach methods contemplated by the clerk. This effort shall include, but not be limited to, a gathering of source lists of persons whose interest, knowledge, or experience suggests the potential for meaningful contribution to increased voter registrations in the
- (b) Publicity. Each program shall make specific provision for publicity on all phases of voter registration, including the training and deputizing of registrars.
- (c) Focus; Balance. Each program shall establish priorities for the direction of its outreach efforts. These priorities shall reflect the clerk's

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assessment as to which specific outreach methods will be the most costeffective in the county. Each plan shall be reasonably balanced in the allocation of outreach efforts and resources among the major pools of unregistered voters.

- (d) Budget. Each program shall include a budget with sections for personnel, equipment and materials for each outreach effort proposed.
- (e) Schedule. Each program shall contain a schedule of critical dates and deadlines associated with each outreach effort proposed. This schedule shall be supported by contractual and voluntary commitments, if any, from those responsible for providing products or services to meet these dates.
- (f) Solicitation of Local Assistance. Each program shall provide for the solicitation of assistance from local offices of all levels of government and of private entities in providing the incidental use of their premises and/or personnel for the purpose of outreach. The offices and entities whose assistance is solicited shall include those which, in the opinion of the county clerk, come into frequent contact with unregistered electors who would be least likely to register under county registration practices in effect prior to July 1, 1976.
- (g) Distribution Controls. Each program shall establish orderly limits upon bulk distributions of registration affidavit forms. Such controls should include, but not be limited to, record keeping, training, and contingency plans for form allocation in the event that supplies become depleted.

All requests for more than 50 registration forms shall be accompanied by a brief statement of distribution plans, which shall be a necessary condition to issuance of the voter registration cards. This statement shall designate the name and address of the person or persons proposing such a distribution plan. This statement shall contain declarations executed under penalty of perjury that reasonable steps will be taken to insure that:

- (1) The person or persons distributing such cards to potential registrants will not neglect or refuse to give a voter registration card to any elector requesting one for the purpose of registering to vote; and
- (2) The voter registration cards issued will not be altered, defaced, or changed in any way, other than by the insertion of a mailing address and the affixing of postage, if mailed, or as otherwise specifically authorized by the Secretary of State, prior to distribution to prospective registrants and that the affidavit portion of the voter registration cards will not be marked, stamped, or partially or fully completed by anyone other than an elector attempting to register to vote or by another person assisting such elector after being requested by such elector to assist in completing the affidavit.

A copy of all statements for requests exceeding 2000 forms shall be sent to the Secretary of State.

#### HISTORY

- 1. Amendment of subsection (g) filed 9–16–77 as an emergency; effective upon filing (Register 77, No. 38).
- 2. Certificate of Compliance filed 1–6–78 (Register 78, No. 1).

# § 20002. Program Emphasis.

Each outreach program shall stress the solicitation of voter registrations by persons whose daily activities place them in frequent contact with potential registrants.

Selection of outreach methods shall consider maximum cost-effectiveness in view of the population of unregistered electors intended to be reached. Selection of methodology shall consider not only the level of effort expended, but also the likelihood of actual registrations obtained thereby.

Nothing in these regulations shall be construed to limit the use of deputy registrars of voters, including bilingual registrars, pursuant to Sections 302 and 303 of the Elections Code. Outreach programs adopted pursuant to these regulations shall provide for the continued use of deputy registrars when a population of unregistered electors requires personal assistance in registration and the continued use of deputy registrars is therefore reasonably appropriate.

Each county shall provide for the solicitation of registrations by personnel of state agencies, to the extent that the state agency has made its personnel available for an outreach program.

#### HISTORY

1. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

# § 20003. Submission of Plan for Outreach Program.

No later than 20 days after the effective date of this Article, each county shall submit to the Secretary of State a plan describing its proposed outreach program. Each program shall be deemed to have met the minimum requirement if the Secretary of State has not interposed an objection within 21 days after such program has been submitted.

### § 20004. Evaluation.

Annually in July, the Secretary of State will evaluate the county's program on the basis of two criteria:

- (a) adherence to the adopted plan for the meeting of minimum requirements
- (b) effectiveness in terms of increase in number of registered voters over statistical/historical expectations.

# § 20005. Cost/Savings Comparison Reports.

On or before August 31 of each year, the county shall report to the Secretary of State its actual net cost of complying with Chapter 704, Statutes of 1975, as amended, including any program adopted pursuant to Section 304 of the Elections Code, for the immediately preceding fiscal year along with an estimated net cost for the forthcoming fiscal year.

For the purposes of these regulations, net cost is defined as total cost as offset by any savings which may accrue as the result of Chapter 704, Statutes 1975, as amended.

For the purposes of these regulations, a fiscal year is defined as the period of time from July 1 of the calendar year through June 30 of the following calendar year.

NOTE: Authority cited: Statutes 1975, Chapter 1119, Section 4; Section 12172, Government Code. Reference: Statutes 1975, Chapter 704, Section 91.

#### HISTORY

1. Amendment filed 5–20–77; effective thirtieth day thereafter (Register 77, No. 21).

# § 20006. Reimbursement of Net Costs.

#### HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

# Article 4. Overseas Citizens Registration and Voting

# § 20050. Overseas Citizen Affidavit of Registration.

The affidavit of registration for overseas citizens shall be in substantially the following form:

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#### AFFIDAVIT OF REGISTRATION (OVERSEAS VOTERS)\*

PRIMI NA NAK			
1 Optional     Mr.       Mr.       Mr.       Mr.       Mr.	(middle) (last)	WARNING: Perjury is punishable by imprisonment for two, three, or four years.  I am a citizen of the United States residing outside the of the United States and the District of Columbia, an 18 years of age at the time of the next election. Call state of domicile, and I do not maintain a domicile in am not now registered to vote in this state or any oth requesting a ballot from any other state and will not manner except by absentee process, and have not vote.	e territorial limits and will be at least ifornia is my last any other state. I er state. I am not vote in any other
3 Mailing Address (outside USA)	Unity Cip ou	tend to vote in any other state or election district of a or in any territory or possession of the United State passport or card of identity and registration issued un- of the Secretary of State. I am not currently imprisonet the conviction of a felony which disqualifies me from under penalty of perjury that the information on this	es. I have a valid der the authority for on parole for a voting. I certify
		and correct.  3 Signature	Date
4 State in USA or Foreign Country of E	Sirth	g Signature, Person Assisting (if any)	Date
5 Date of Birth (month-day-year) 6 Occupation	10 (Enter passport or c	ard of identity and registration numbers here, if any.)	·
Political Party (check one)  [ ] American Independent Party [ ] Democratic Party [ ] Peace and Freedom Party [ ] Republican Party [ ] Decline to State [ ] Other	FOR OFFICIAL USE		

\*See below for Instructions to Voter in Filling Out Overseas Voter Ballot.

## INSTRUCTIONS

PLEASE TYPE OR PRINT IN INK: Read instructions and information carefully. Only your "signature" should be written; all other information should be printed or typed.

OPTIONAL: You will not be denied your right to register if you fail to give information in shaded area.

- Print your complete name. A prefix (Mr., Mrs., Miss, Ms.) is not required, but if used should be placed in the shaded areas.
- Print your last complete residence address including City, State, and Zip Code. Give the street, space, or slip number. Enter the street name to include North, South, East, West, if appropriate, and indicate whether it is called ave., blvd., drive, place, street, road, lane, or circle, etc.
- IMPORTANT: Enter complete mailing address (outside USA) to include all pertinent information required for mailing.
- Enter the name of the U.S. state (or foreign country) where you were born.
- 5. Enter your complete date of birth.
- Print your specific occupation, such as: nurse, carpenter, homemaker, etc.
- Place an X in the bax before the Qualified Political Party with which you choose to affiliate. In a direct primary election you will receive the ballot of the Qualified Political Party which you have selected.

- If you do not wish to affiliate with a qualified political party you may place an X before the words "Decline to State," or you may mark the box before "Other" and enter the name of any unqualified political party, If you do not affiliate with a qualified political party, you will not receive a ballot at the direct primary election, but will receive a ballot for the general election.
- After reading the warning and statement, sign your name under penalty of perjury, and enter the date.
- If you require assistance, and anyone helps you in completing the affidavit, have that person sign and date the affidavit below your signature.
- Enter all identification numbers issued on valid passport or card of identity and registration issued under authority of Secretary of State.

NOTE: Authority and reference cited for Article 4 (Sections 20050 and 20051: Sections 1304 and 1309, Elections Code). Specific authority and reference cited for Section 20050: Sections 706 and 1306, Elections Code.

#### HISTORY

- Amendment filed as an emergency 5-26-78; effective upon filing (Register 78, No. 21). For prior history, see Register 77, No. 2).
- 2. Certificate of Compliance filed 9-22-78 (Register 78, No. 38).

#### § 20051. Overseas Citizens Absent Voters' Ballots.

The ballot to be used by overseas voters may be the absentee ballot used by resident absentee voters, except that all measures and all offices appearing on the ballot other than federal offices shall be marked out with indelible marking, so that the overseas voter votes only for federal offices.

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Alternatively, the county clerk may design an absentee ballot designated solely for overseas voters listing only candidates for nomination or election to federal offices.

NOTE: Additional authority and reference cited: Section 1306, Elections Code. HISTORY

- 1. New section filed 10–14–76 as an emergency; effective upon filing (Register 76, No. 42).
- 2. Repealed by operation of Section 11422.1(c), Government Code (Register 77, No. 21).
- 3. New section filed 5–2–77; effective thirtieth day thereafter (Register 77, No. 21).

- 4. Amendment filed 9–12–78 as an emergency; effective upon filing (Register 78, No. 37).
- 5. Certificate of Compliance filed 9-22-78 (Register 78, No. 38).

# Article 5. Cancellation of Voter Registration

# § 20070. Notice to Voter.

The notice to voters sent by the county clerk or registrar of voters under Elections Code section 706.1, notifying the voter that the voter's registration affidavit will be changed or cancelled, shall be in substantially the following form:

ADDRESS CORRECTION REQUESTED	
ORRECT S CORRECTA	First Class Mail
] Incorrect / Incorrecta ] Temporary/ Temporal	Post Card Rate U.S. POSTAGE PAID Permit No.
ADDRESS CORRECTION REQUESTED	)
DISTINATA) es:	
]	S CORRECTA    Incorrect / Incorrecta   Temporary/ Temporal  ADDRESS CORRECTION REQUESTED

NOTE: Authority cited: Sections 706 and 1306, Elections Code. Reference: Sections 706 and 1306, Elections Code. Additional authority cited: Section 706.1, Elections Code. Additional reference: Section 706.1, Elections Code.

History

1. New Article 5 (Section 20070) filed 5-26-78 as an emergency; effective upon filing (Register 78, No. 21).

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2. Amendment filed 9–12–78; effective thirtieth day thereafter (Register 78, No. 37).

# § 20075. State Registrar of Vital Statistics to Notify County Elections Official of Deaths of Voting Age Persons that Occur Outside of the County of Residence.

At the time that the State Registrar of Vital Statistics sends notification pursuant to Health and Safety Code Section 102245 to the local registrar of births and deaths of the deaths of all residents of the county whose deaths occurred outside the county, he or she shall send a copy of the notification to the county elections official.

NOTE: Authority cited: Section 2206, Elections Code; and Section 12172.5, Government Code. Reference: Section 2205, Elections Code.

#### HISTORY

1. New section filed 11–4–96; operative 11–4–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 45).

# § 20076. County Elections Official to Provide Secretary of State with Correct Mailing Address to Receive from the State Registrar of Vital Statistics Notification of Out-of-County Deaths.

No later than January 15 of each year the county elections official shall furnish to the Secretary of State the correct mailing address of the unit or person within his or her office to whom the notification of out–of–county deaths shall be sent by the State Registrar of Vital Statistics.

NOTE: Authority cited: Section 2206, Elections Code; and Section 12172.5, Government Code. Reference: Section 2205, Elections Code.

#### HISTORY

 New section filed 11-4-96; operative 11-4-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 45).

# Article 6. Independent Nomination Petition Signature Verification

#### § 20085. Application of Article.

This article shall apply to verification of independent nomination petition signatures. The purpose of these regulations is to achieve uniform interpretation of Elections Code Sections 6831–6833 and 6890–6894. "County Clerk" shall refer to "Registrar of Voters" where applicable. Note: Authority cited: Section 12172.5, Government Code. Reference: Sections 6831–6833; 6890–6894, Elections Code.

#### HISTORY

- New section filed 6-30-80 as an emergency; effective upon filing (Register 80, No. 27). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 10-28-80.
- 2. Certificate of Compliance transmitted to OAL 10-28-80 and filed 11-28-80 (Register 80, No. 48),

# § 20086. Signature Verification Methods.

The clerk shall verify either (a) a sample consisting of 5 percent of the signatures submitted or 500 signatures, whichever is greater, or (b) 100 percent of the signatures submitted.

If subsection (b) is chosen, the clerk may arrange for the candidate or candidate's representative to deposit the petition sections with the clerk at intervals prior to the last day the petition is circulated, so that the clerk may begin verifying the signatures.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 6831–6833; 6890–6894, Elections Code.

### HISTORY

- New section filed 6-30-80 as an emergency; effective upon filing (Register 80, No. 27). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 10-28-80.
- 2. Certificate of Compliance transmitted to OAL 10-28-80 and filed 11-28-80 (Register 80, No. 48).

#### § 20087. Report of Total Signatures.

The Secretary of State must receive actual notice of the total number of signatures submitted in each county and the method of verification to

be used within two working days of the close of the circulation period or of final deposit of petition sections, whichever is earlier, but in no event later than 7 p.m. on the 88th day prior to the election. If telephonic communication is used to convey actual notice, written confirmation must be transmitted to the Secretary of State on the same day that telephone notice is given.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 6831–6833; 6890–6894, Elections Code.

#### HISTORY

- 1. New section filed 6–30–80 as an emergency; effective upon filing (Register 80, No. 27). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10–28–80.
- Certificate of Compliance transmitted to OAL 10–28–80 and filed 11–28–80 (Register 80, No. 48).

#### § 20088. Random Number List.

Upon final deposit of the nomination petitions for each candidate, clerks verifying a sample of signatures shall sequentially number the signatures. If a numbering scheme is adopted which results in some numbers not being assigned to a signature, these gaps between the first and last numbers assigned to the signature must also be reported to the Secretary of State in the notice required by Section 20087.

Upon receipt of this notice, the Secretary of State shall immediately generate a list of random numbers for that county, which shall determine which signatures are to be verified for each candidate. This list shall be transmitted to the clerk within one day of actual receipt of the total signature count. Upon receiving the random number list, the clerk shall verify each signature indicated thereon.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 6831–6833; 6890–6894, Elections Code.

#### HISTORY

- New section filed 6-30-80 as an emergency; effective upon filing (Register 80, No. 27). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10-28-80.
- Certificate of Compliance transmitted to OAL 10-28-80 and filed 11-28-80 (Register 80, No. 48).

# § 20089. Total Signature Reports.

When the total number of signatures submitted in each county has been reported to the Secretary of State in writing, the Secretary of State shall immediately ascertain whether the number of signatures submitted for each candidate is greater than or less than that required to qualify the candidate.

- (a) If the number of signatures is found to be less than that required to qualify the candidate, the Secretary of State shall notify each county clerk of the total number of signatures submitted and that such total was insufficient to qualify the candidate for the ballot. Upon such notification, the clerks need take no further action with respect to verification of the nomination papers.
- (b) If the total number of signatures submitted is equal to or greater than the number of signatures required to qualify the candidate, the Secretary of State shall so notify each county clerk, and each clerk shall continue to verify signatures.
- (c) The Secretary of State must receive actual notice of each county's total valid signature certification not later than the 83d day prior to the election. If telephonic communication is used to convey actual notice, written certification shall be transmitted on the same day that telephone notice is given.
- (d) If no county in a district has chosen to verify a random sample of signatures pursuant to Section 20086(a), the reporting date under Section 20089(c) shall be not later than the 64th day prior to the election.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 6831–6833; 6890–6894, Elections Code.

- New section filed 6-30-80 as an emergency; effective upon filing (Register 80, No. 27). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10-28-80.
- 2. Certificate of Compliance transmitted to OAL 10-28-80 and filed 11-28-80 (Register 80, No. 48).

#### § 20090. Total Valid Signature Reports.

Upon receipt of written notice under Section 20089(c) or (d), the Secretary of State shall compute the number of valid signatures submitted for each candidate in the district in which nomination papers are submitted, and will notify the clerks of the results within one day of receipt of the figures from the last reporting county.

If Section 20089(d) does not apply:

- (a) If the total number of signatures submitted is found to be less than 90 percent or greater than 110 percent of the total number required for nomination, the Secretary of State shall notify clerks using the random sample verification method that the papers are sufficient or insufficient, whichever is appropriate according to Elections Code Section 6831.1, and no further action shall be taken relative to signature verification.
- (b)(1) If the total computed is found to be between 90 percent and 110 percent of the number required, the Secretary of State shall notify the clerks who used the random sample verification method to verify each signature on the nomination papers.
- (2) The total valid signature count must be reported to the Secretary of State not later than the 64th day prior to the election, in the same manner as Section 20089(c).

All county clerks must file candidates' nomination papers with the Secretary of State not later than the 64th day prior to the election.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 6831–6833; 6890–6894, Elections Code.

#### HISTORY

- New section filed 6-30-80 as an emergency; effective upon filing (Register 80, No. 27). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10-28-80.
- Certificate of Compliance transmitted to OAL 10–28–80 and filed 11–28–80 (Register 80, No. 48).

# § 20091. Duplicate Signatures.

In any report of valid signatures based on a sample of signatures, the clerk shall report separately the number of signatures rejected for being duplicate signatures.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 6831–6833; 6890–6894, Elections Code.

#### HISTORY

- New section filed 6-30-80 as an emergency; effective upon filing (Register 80, No. 27). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10-28-80.
- Certificate of Compliance transmitted to OAL 10–28–80 and filed 11–28–80 (Register 80, No. 48).

# § 20095. Sign Only One Paper.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 6834 and 6838, Elections Code.

### History

- 1. New Article 6 (Section 20095) filed 6–20–80 as an emergency; effective upon filing (Register 80, No. 25). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 10–19–80. For prior history, see Registers 79, No. 33 and 78, No. 29.
- Repealed by operation of Section 11346.1(g), Government Code (Register 81, No. 47).

# Article 7. Voting

### § 20100. Overvotes.

When a voter has selected, by marking the ballot or writing in or a combination thereof, more candidates than there are candidates to be nominated or selected for the office, the vote for that office shall not be counted, regardless of whether the candidate whose name is written in has complied with the requirements of Chapter 8 (commencing with Section 7300) of Division 6 of the Elections Code.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 15242, 17007(c) and 17100–17101, Elections Code.

#### HISTORY

1. Editorial renumbering of Chapter 2 (Sections 20100–20128) to Title 2, Division 8, Chapter 24 (Sections 45000–45128) and new Article 7 (Section 20100) filed 9–19–80; effective thirtieth day thereafter (Register 80, No. 38).

#### § 20101. Definitions.

- (a) For the purpose of Sections 20102–20105, "qualified write—in candidate" shall refer to candidates who have complied with Chapter 8 of Division 6 of the Elections Code (beginning at Section 7300).
- (b) For the purpose of Sections 20102–20105, "ballot" shall include ballot envelope, card, or paper ballot on which write–in votes are authorized to be indicated by Elections Code § 10331.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 15242, 15304, 17100, 17101, 22603, Elections Code.

#### HISTORY

- 1. New section filed 10–20–80 as an emergency; effective upon filing (Register 80, No. 43). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–17–81.
- 2. Certificate of Compliance transmitted to OAL 2–6–81 and filed 3–5–81 (Register 81, No. 10).

#### § 20102. Write-in Vote; No Office Indicated.

The name of a qualified write—in candidate shall be counted when the name is written in on a voter's ballot and no office is indicated for the candidate, or the office is incompletely indicated (e.g., "Senator" without district number), if:

- (a) the candidate is a qualified write—in candidate for an office properly appearing on the voter's ballot; and
- (b) no other qualified write-in candidate for any office appearing on the voter's ballot bears a name so similar to the name as written in, considering the voter's misspellings or omission of portions of the name, if any, as to leave a reasonable doubt as to the voter's intention.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 15242, 15304, 17100, 17101 and 22603, Elections Code.

#### HISTORY

- 1. New section filed 10–20–80 as an emergency; effective upon filing (Register 80, No. 43). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–17–81.
- 2. Certificate of Compliance transmitted to OAL 2-6-81 and filed 3-5-81 (Register 81, No. 10).

#### § 20103. Write-in Vote; Misspelled or Incomplete Name.

The misspelled or incomplete name of a qualified write—in candidate written in on a ballot shall be counted for the candidate when the office for which the candidate has qualified is also indicated on the voter's ballot, if:

- (a) the name as written bears a reasonable resemblance to the qualified candidate's name: and
- (b) no other write—in candidate qualified for the indicated office has a name that is so similar to the name as written in as to leave a reasonable doubt as to the voter's intention.

NOTE: Authority cited: Section 1272.5, Government Code. Reference: Sections 15242, 15304, 17100, 17101, 22603, Elections Code.

## HISTORY

- 1. New section filed 10–20–80 as an emergency; effective upon filing (Register 80, No. 43). A Certificate of Compliance must be transmitted to OAL, within 120 days or emergency language will be repealed on 2–17–81.
- 2. Certificate of Compliance transmitted to OAL 2–6–81 and filed 3–5–81 (Register 81, No. 10).

# § 20104. Write-in Vote; Misspelled or Incomplete Name, Office Omitted.

The misspelled or incomplete name of a qualified write-in candidate written in on a ballot shall be counted for the candidate even though the office for which the candidate has qualified is omitted or incompletely indicated on the voter's ballot, when:

- (a) the name as written bears a reasonable resemblance to the qualified candidate's name; and
- (b) no other write—in candidate qualified for any office properly appearing on the voter's ballot has a name that is so similar to the name as written in as to leave a reasonable doubt as to the voter's intention.

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NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 15242, 15304, 17100, 17101 and 22603, Elections Code.

#### HISTORY

- 1. New section filed 10–20–80 as an emergency; effective upon filing (Register 80, No. 43). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–17–81.
- Certificate of Compliance transmitted to OAL 2-6-81 and filed 3-5-81 (Register 81, No. 10).

## § 20105. Write-in Vote; Wrong Office Indicated.

The name of a write-in candidate qualified for an office appearing on the voter's ballot which is written in the pre-printed column designated for an office other than one for which the write-in candidate is qualified shall not be counted for any purpose.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 15242, 15304, 17100, 17101 and 22603, Elections Code.

#### HISTORY

- 1. New section filed 10–20–80 as an emergency; effective upon filing (Register 80, No. 43). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–17–81.
- 2. Certificate of Compliance transmitted to OAL 2-6-81 and filed 3-5-81 (Register 81, No. 10).

# § 20106. Voting System Inspection.

On election day, every precinct inspector shall inspect every voting system or machine at least every two hours during hours the polls are open. Any marks, notations, or other matter found written or otherwise marked on the ballot assembly or machine which bears the candidate's names and titles of measures shall immediately be removed or the ballot assembly replaced.

This section shall apply only to elections using voting machines or voting systems on which the candidate's names and titles of measures are not printed on the punch card or paper on which the voter marks, punches or otherwise indicates the vote.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Sections 29470 and 29612, Elections Code.

#### HISTORY

- 1. New section filed 10–20–80 as an emergency; effective upon filing (Register 80, No. 43). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2–17–81.
- 2. Certificate of Compliance transmitted to OAL 2-6-81 and filed 3-5-81 (Register 81, No. 10).

# § 20107. Standards for Proof of Residency or Identity When Proof Is Required by Help America Vote

- (a) This section shall apply in all instances where voters and new registrants are required by the federal Help America Vote Act of 2002 (Pub. L. 107–252, 116 Stat. 1666, 42 U.S.C. 15483) to prove residency or present documents to establish identity.
- (b) This section shall be liberally construed to permit voters and new registrants to cast a regular ballot. Any doubt as to the sufficiency of proof or a document presented shall be resolved in favor of permitting the voter or new registrant to cast a regular ballot.
- (c) If a voter or new registrant does not present proof or a document that complies with this section, then the voter or new registrant shall be advised by the poll worker or other election official with whom the voter or new registrant is conferring that he or she may vote a provisional ballot and the voter or new registrant shall be permitted to do so.
- (d) For purposes of this regulation, proof of residency or identity, shall consist of presenting an original or copy of any of the documents described below in either paragraph (1) or (2).
- (1) Current and valid photo identification provided by a third party in the ordinary course of business that includes the name and photograph of the individual presenting it. Examples of photo identification include, but are not limited to, the following documents:
  - (A) driver's license or identification card of any state;
  - (B) passport;
  - (C) employee identification card;
  - (D) identification card provided by a commercial establishment;
  - (E) credit or debit card;

- (F) military identification card;
- (G) student identification card;
- (H) health club identification card;
- (I) insurance plan identification card; or
- (J) public housing identification card.
- (2) Any of the following documents, provided that the document includes the name and address of the individual presenting it, and is dated since the date of the last general election, unless the document is intended to be of a permanent nature such as a pardon or discharge or unless the date requirements of paragraph (F) apply, including:
  - (A) utility bill;
  - (B) bank statement;
  - (C) government check;
  - (D) government paycheck;
  - (E) document issued by a governmental agency;
- (F) sample ballot or other official elections document issued by a governmental agency dated for the election in which the individual is providing it as proof of residency or identity;
  - (G) voter notification card issued by a governmental agency;
- (H) public housing identification card issued by a governmental agency;
- (I) lease or rental statement or agreement issued by a governmental agency;
  - (J) student identification card issued by a governmental agency;
  - (K) tuition statement or bill issued by a governmental agency;
- (L) insurance plan card or drug discount card issued by a governmental agency;
- (M) discharge certificates, pardons, or other official documents issued to the individual by a governmental agency in connection with the resolution of a criminal case, indictment, sentence, or other matter;
- (N) public transportation authority senior citizen and disabled discount cards issued by a governmental agency;
- (O) identification documents issued by governmental disability agencies:
- (P) identification documents issued by government homeless shelters and other government temporary or transitional facilities;
- (Q) drug prescription issued by a government doctor or other governmental health care provider;
  - (R) property tax statement issued by a governmental agency;
  - (S) vehicle registration issued by a governmental agency; or
- (T) vehicle certificate of ownership issued by a governmental agency. NOTE: Authority cited: Section 12172.5, Government Code; and Section 2124, Elections Code. Reference: Section 14310, Elections Code; and Section 303, Pub. L. No. 107–252, 116 Stat. 1666 (2002) [42 U.S.C. 15483].

- 1. New section filed 1–18–96 as an emergency; operative 1–16–96 pursuant to Government Code section 11349.3 (Register 96, No. 3). A Certificate of Compliance must be transmitted to OAL by 5–17–96 or emergency language will be repealed by operation of law on the following day.
- 2. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 39).
- 3. New section filed 9–27–96; operative 9–27–96 pursuant to Government Code section 11343.4(d) (Register 96, No. 39).
- 4. Amendment of subsection (b) and new subsection (d) filed 1-20-98 as an emergency; operative 1-20-98 (Register 98, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-20-98 or emergency language will be repealed by operation of law on the following day.
- 5. Certificate of Compliance as to 1–20–98 order, including amendment of section heading, transmitted to OAL 5–15–98 and filed 6–23–98 (Register 98, No. 26).
- Amendment of section heading, repealer and new section and amendment of NOTE filed 2-5-2004 as an emergency; operative 2-5-2004 (Register 2004, No.
   A Certificate of Compliance must be transmitted to OAL by 6-4-2004 or emergency language will be repealed by operation of law on the following day.
- 7. Amendment of section heading, repealer and new section and amendment of Note refiled 6–1–2004 as an emergency, including further amendment of subsection (a); operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
- Amendment of section heading, repealer and new section and amendment of NOTE refiled 9-29-2004 as an emergency; operative 9-29-2004 (Register 2004, No. 40). A Certificate of Compliance must be transmitted to OAL by

- 1-27-2005 or emergency language will be repealed by operation of law on the following day.
- Amendment of section heading, repealer and new section and amendment of NOTE refiled 1–26–2005 as an emergency; operative 1–27–2005 (Register 2005, No. 4). A Certificate of Compliance must be transmitted to OAL by 5–27–2005 or emergency language will be repealed by operation of law on the following day.
- 10. Amendment of section heading, repealer and new section and amendment of NOTE refiled 5-27-2005 as an emergency; operative 5-27-2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-26-2005 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–27–2005 order, including amendment of section, transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

# Chapter 2. Statewide Voter Registration Database

#### § 20108. Purpose.

- (a) The purpose of this chapter is to establish standards and procedures for processing, transmitting, and maintaining voter registration records in a manner that conforms with the statewide voter registration list requirements set forth in the Help America Vote Act of 2002 (HAVA) (Pub. L. No. 107–252 (2002) 116 Stat. 1666, 42 U.S.C. § 15483.)
- (b) This chapter applies to the Secretary of State and all elections officials within the State of California in processing, transmitting, and maintaining voter registration records in this state.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- 1. New chapter 2 (sections 20108–20108.80) and section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day. For prior history of chapter 2 (sections 20100–20128), see Register 80, No. 38.
- 2. New chapter 2 (sections 20108–20108.80) and section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New chapter 2 (sections 20108–20108.80) and section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New chapter 2 (sections 20108–20108.80) and section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

# § 20108.1. Definitions.

As used in this Chapter, the following words have the following definitions:

- (a) "Active voter" means any registered voter that is legally entitled to vote and has not been deemed an "inactive voter" pursuant to the voter registration provisions of Elections Code section 2221.
- (b) "Business day" means each day in which the elections official, as defined below, is open for business.
- (c) "Calvalidator" means the Secretary of State's computer application and system used to validate the California driver's license or state identification number or the last four digits of the social security number of new or existing registrants.
- (d) "Calvoter" means the Secretary of State's computer application, system and hardware that receives, transmits, and stores voter registra-

- tion data for all registered voters in California pursuant to the requirements of Section 303 of HAVA (42 U.S.C. § 15483).
- (e) "Calvoter workstation" means the Secretary of State's owned personal computer located in the office of each elections official and connected directly to the Calvoter network, which is used to facilitate the exchange of data between each county and the Calvoter database.
- (f) "Confirmed California driver's license or state identification number" means a driver's license or state identification number within Calvoter that has been provided to Calvoter by the elections official in the county where the individual registered to vote.
- (g) "Deficient registration record" means those records submitted to Calvoter that do not contain the substantive information necessary to determine eligibility to vote, as well as those records that do not meet the Calvoter data exchange standards set forth in the Calvoter and Calvalidator Data Standards (05/2007).
- (h) "Elections management system" means the computerized application and database that manages voter registration and related election functions for a jurisdiction.
- (i) "Elections official" means a county clerk or registrar of voters who is responsible for collecting and processing voter registration data within a jurisdiction in the State of California.
- (j) "Federal election" means any general, special, primary, or runoff election for any Federal office (President, Vice President, U.S. Senator or U.S. Representative), including presidential preference primaries.
- (k) "Full load file" means an electronic data file containing all voter registration records from a county for submission to Calvoter. Such a file must adhere to the format standards set forth in the Calvoter and Calvalidator Data Standards (05/2007).
- (*l*) "Inactive voter" means a voter for whom a county has received: 1) a returned residency confirmation mailing pursuant to California Elections Code section 2220 without a forwarding address within the same county, or 2) information obtained through the United States Postal Service National Change of Address (NCOA) database indicating that the voter has moved outside the county pursuant to California Elections Code sections 2222 and 2226. Per California Elections Code sections 2221 and 2226, such inactive registrants retain the legal right to vote, but need not be mailed election material. Further, inactive voters who do not vote in two consecutive Federal general elections are subject to cancellation of their voter registration pursuant to Section 303(a)(4)(A) of HAVA (42 U.S.C. § 15483(a)(4)(A)).
- (m) "List maintenance notices" mean any notices mailed to a registered voter for the purpose of verifying registration information about a registrant and to determine a registrant's ongoing eligibility to vote.
- (n) "Registration record" means electronically stored data associated with an individual registered voter.
- (o) "Registration update file" means an electronic data file for submission to Calvoter that contains all voter registration record changes that have occurred since the last data submission from a county. Such a file must adhere to the format standards set forth in the Calvoter and Calvalidator Data Standards (05/2007).
- (p) "Satisfactory proof of identity" means the forms of proof of residency and identity as defined in the California Code of Regulations, title 2, section 20107.
- (q) "Verified California driver's license or state identification number" means a registrant's California driver's license or state identification number that has been verified against California Department of Motor Vehicle records.
- (r) "Verified social security number" means the last four digits of a registrant's social security number issued by the Social Security Administration that has been verified against the Social Security Administration through the California Department of Motor Vehicle records.
- (s) "Voter history" means the electronic record of each time a voter participates in a state or Federal election.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

### § 20108.12. Action Required.

Unless otherwise provided in law, an elections official who receives a notice requesting a change to, or cancellation of, a voter's registration record pursuant to the California Elections Code or this chapter shall perform and complete the requested action within five (5) business days. During the five (5) business day period, county elections officials shall take all reasonable actions to research and resolve the requested action, including but not limited to, reviewing registration and voting history, reviewing source documents, matching signatures and contacting registrants directly. Performance shall not be complete until the elections official has submitted the fully complete and updated files or full load files to Calvoter in accordance with Section 20108.15 and Section 20108.40. NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

#### § 20108.15. Data Exchange Standards.

- (a) The Secretary of State shall regularly check and identify records that are not compliant with the *Calvoter and Calvalidator Data Standards* (05/2007). Elections officials shall correct the deficient registration records in accordance with Section 20108.25 and Section 20108.40.
- (b) Except as provided in Section 20108.18, elections officials shall submit all registration records to the Secretary of State. Such records

- shall be submitted through the Calvoter workstations and adhere to the format standards set forth in the *Calvoter and Calvalidator Data Standards* (05/2007).
- (c) The Secretary of State shall transmit registration records, notices, and other information regarding the statewide voter registration database to elections officials through the Calvoter workstations.
- (d) Each elections official shall access the Calvoter workstation each business day to obtain information transmitted by the Secretary of State.
- (e) The publication entitled *Calvoter and Calvalidator Data Standards (05/2007)* may be accessed by elections officials through the county-vendor website or by contacting the Secretary of State's Office. NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5-23-2007 order transmitted to OAL 6-6-2007 and filed 6-13-2007 (Register 2007, No. 24).

# § 20108.18. Official Statewide Voter Registration List.

- (a) The official statewide voter registration list for Federal elections shall be maintained in Calvoter. Elections officials shall use the official statewide voter registration list to determine eligibility to vote, issuance of ballot, and whether or not to count a provisional ballot.
- (b) For the purposes of establishing the official voter registration list for a Federal election and determining voter eligibility to vote in that election, including determining the validity of any provisional ballot cast in that election, only new or updated voter registration data received by county elections officials on or before the 15th day prior to the election shall be accepted by Calvoter after the 15th day prior to the election through the 28th day after the election, except under the following circumstances:
- (1) New or updated voter registration data received pursuant to the production and filing of a certified copy of a judgment of the superior court directing registration to be made;
- (2) New or updated voter registration data received by mail in a voter registration affidavit postmarked on or before the 15th day prior to the election;
- (3) New or updated voter registration data received in an affidavit submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg) on or before the 15th day prior to the election;
- (4) Voter registration data received from new residents in accordance with California Elections Code Section 3400;
- (5) Voter registration data received from new citizens in accordance with California Elections Code Section 3500;
- (6) Updated voter registration data received pursuant to subdivision (c); or

- (7) Voter registration data regarding anyone else determined by the Secretary of State or an elections official to have been legally registered to vote as of election day.
- (c) For the period beginning on the 14th day prior to a Federal election through the 28th day after the election, all voter registration record additions, updates and deletions not relevant to that election shall be held at the County and not added to Calvoter until the 29th day following that election.
- (1) A registrant who has submitted an affidavit of registration on or before the 15th day prior to an election with insufficient information to determine eligibility may be placed in pending status. Elections officials shall permit those registrants who remain in pending status after the 15th day prior to an election, to vote a provisional ballot in accordance with Elections Code section 14310, notwithstanding that pending status.
- (2) The elections official shall make all reasonable attempts to resolve the pending status of registrants described in paragraph (1) within 28 days of the election and shall count the provisional ballot if the pending status of the registrant within that time.
- (d) Elections officials shall provide each polling place in a Federal election with an index of registration provided for the purpose described in California Elections Code section 14216. Elections officials shall ensure that the index of registration is identical to the county index of registration in Calvoter.
- (e) New or updated voter registration data that is not received by county election officials on or before the 15th day prior to the Federal election and that is not subject to the circumstances described in paragraphs (b)(1) through (b)(7) above shall be submitted to and accepted by Calvoter in accordance with Section 20108.15 commencing with the 29th day after the election.
- (f) Following the certification of election results by all elections officials, and beginning on the 29th day following the Federal election, the new or updated voter registration data shall be submitted to and accepted by Calvoter in accordance with Section 20108.15 and Section 20108.40. NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Sections 2100, 2102, 2107, 2189, 3400, 3500 and 15372, Elections Code.

#### HISTORY

- New section filed 12-12-2005 as an emergency; operative 12-12-2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-11-2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

#### § 20108.20. Elections Management System Requirements.

Each elections official shall maintain an elections management system that receives information from and submits information to Calvoter in accordance with Section 20108.15 and Section 20108.40. The elections management systems shall also maintain and process all of the following information:

(a) The registrant's California driver's license or state identification number and whether that number was verified against California Depart-

- ment of Motor Vehicle records; or, for registrants without a California driver's license or identification number issued by the Department of Motor Vehicles, the last four digits of the registrant's social security number and whether that number was verified against Social Security Administration records; or, for registrants without a California driver's license or state identification number or a social security number, the unique identifier issued to the registrant in accordance with Section 20108.70.
- (b) Pending status for each voter registration record until such time as the pending status is resolved;
- (c) Voting history of each registered voter in the county in which the elections official conducts and administers the elections;
- (d) Identify those voters who registered by mail, and (i) if so, are required to present satisfactory proof of identity when voting for the first time in a Federal election or, (ii) if not, the reason for the exemption, which are (A) previously voted in a Federal election within the state, (B) submitted satisfactory proof of identification with the voter registration application, (C) provided a driver's license or state identification number or the last four digits of the social security number on the registration application which was verified, (D) entitled to vote absentee under the Uniformed and Overseas Citizens Absentee Voting Act, (E) entitled to vote otherwise than in person under the Voting Accessibility for the Elderly and Handicapped Act, or (F) entitled to vote otherwise than in person under any other Federal law.
- (e) Date and type for each mailing list maintenance notice sent to a voter, whether the voter to whom the list maintenance notice was directed responded to the notice, and any resulting updates to voter registration records;
- (f) For a voter who is listed in an elections management system as an inactive voter, the reason for the change in status to inactive voter and the date of the change; and
- (g) For a voter who is listed in an elections management system as having a cancelled registration, the reason for the change in status to cancelled and the date of the change.

Note: Authority cited: Section 12172.5. Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Sections 2150, 2201, 2203, 2220, 2221, 2223, 2224, 2225 and 2226, Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8-15-2006 as an emergency; operative 8-15-2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-13-2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

# § 20108.25. Deficient Registration Records.

(a) A registration record submitted for the purposes of updating Calvoter that does not contain substantive information required to determine eligibility to vote shall not be accepted by Calvoter and shall automatically be returned to the elections official who submitted the deficient registration record with a deficiency notice. Within five (5) business days of receipt of a deficiency notice pursuant to this subdivision the elections official shall correct and resubmit the registration record to Calvoter in

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accordance with Section 20108.15 and Section 20108.40. An individual who is the subject of the deficient registration record shall not be registered to vote until the deficient registration record is resubmitted to and accepted by Calvoter. For purposes of this subsection, "substantive information required to determine eligibility to vote" means the facts necessary to determine eligibility to vote, including the registrant's name, whether the registrant is a citizen of the United States, place of residence and if the registrant does not possess a residence address at which mail may be received, his or her mailing address, date of birth, state or country of birth, and a statement that the registrant is not currently imprisoned or on parole for the conviction of a felony. An individual who is not registered to vote pursuant to this subsection may only vote by provisional ballot.

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(b) When the Secretary of State identifies a registration record within Calvoter that lacks only nonsubstantive information or does not conform to the Calvoter and Calvalidator Data Standards (05/2007), the Secretary of State shall automatically send a deficiency notice in accordance with Section 20108.15 to the elections official who submitted the deficient registration record. Within five (5) business days of receipt of a deficiency notice, the elections official shall submit the corrections to Calvoter in accordance with Section 20108.15 and Section 20108.40. Voters whose registration records are identified as deficient pursuant to this subdivision shall remain as active voters and shall be permitted to vote using a regular ballot. For purposes of this subsection, "nonsubstantive information" means information that is not required to determine eligibility to vote.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Sections 2101 and 2150, Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8-15-2006 as an emergency; operative 8-15-2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-13-2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

# § 20108.30. Confirmation of California Driver's License and State Identification Numbers for Affidavits of Registration Submitted Prior to January 1, 2006.

- (a) On or before December 15, 2005 the Secretary of State shall process the driver's license and state identification data file from the California Department of Motor Vehicles to identify California driver's license and state identification numbers for all registered voters in Calvoter who do not have confirmed California driver's license or state identification numbers.
- (b) The unconfirmed California driver's license and state identification numbers that are identified as a result of the process in subdivision (a) shall be sent to elections officials by December 15, 2005, in accordance with Section 20108.15 and Section 20108.40. Elections officials shall enter the unconfirmed California driver's license and state identifi-

cation numbers in the files of registered voters in the counties and send registration update files or full load files to Calvoter in accordance with Section 20108.15 and Section 20108.40 on or before December 31, 2005.

(c) For each registered voter for whom the process in subdivision (a) does not identify a California driver's license or state identification number, elections officials shall generate a unique identification number for the registrant in accordance with the *Calvoter and Calvalidator Data Standards* (12/2005) on or before December 31, 2005.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Section 2150, Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

#### § 20108.35. Active Voter Files.

Elections officials shall continuously submit all active voter files to Calvoter in accordance with Section 20108.15 and Section 20108.40.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4-10-2006 as an emergency; operative 4-10-2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

#### § 20108.36. Inactive Voter Files.

Elections officials shall continuously submit all inactive voter files to Calvoter in accordance with Section 20108.15 and Section 20108.40. Note: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.37. Processing New Voter Registration Applications.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33)
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. Repealer filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.38. Additional Processing for Voter Registration Applications Submitted by Mail for New Voters.

- (a) If a voter registration application is submitted by mail, the elections official shall determine if any of the following conditions are met before the voter registration data is submitted to Calvoter:
- (i) Applicant provided satisfactory proof of identity with the voter registration application or otherwise provided satisfactory proof of identity prior to voting in a Federal election; or
- (ii) California driver's license or state identification number or the last four digits of the social security number provided was verified with Calvalidator or the Department of Motor Vehicles; or
- (iii) Applicant is registered to vote under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff–1 et seq.), or is entitled to vote other than in person under the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee–1(b)(2)(B)(ii)), or any other Federal law; or

- (iv) Applicant has previously registered to vote in the State and the elections official has determined, after researching the applicant's voting history in the county election management system and Calvoter, that the applicant has previously voted in a Federal election in the State.
- (b) If any of the conditions in subdivision (a) are satisfied, the registrant shall be exempt from providing further proof of identity under HAVA for the purpose of voting. The elections official shall enter into his or her election management system the reason for the exemption from the HAVA identification requirement and, if the registrant is determined to be otherwise eligible to vote, the elections official shall transmit that data to Calvoter in accordance with Section 20108.15 and Section 20108.40.
- (c) If the elections official determines that none of the conditions in subdivision (a) are satisfied, but the registrant is determined to be otherwise eligible to vote, the elections official shall submit the record to Calvoter in accordance with Section 20108.15 and Section 20108.40 and that record shall indicate that proof of identity must be provided the first time the voter votes in a Federal election.
- (d) Voters identified in subdivision (c) shall be required to provide proof of identity the first time they vote in a Federal election.
- (e) Once voters identified in subdivision (c) have voted in a Federal election, the elections official shall update the county election management system and Calvoter to reflect that the voter is no longer required to provide proof of identity in accordance with Section 20108.15 and Section 20108.40.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Section 2150, Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

# § 20108.40. Updating Calvoter with New Registration Records and Changes to Existing Registration Records.

Except as provided in Section 20108.18, whenever an elections official receives a new registration record or a change to an existing registration record or makes a change to an existing registration record, whether in response to a notice from the Secretary of State or otherwise, the elections official shall process such information in accordance with Section 20108.12 and transmit a registration update file or a full load file to Calvoter in accordance with Section 20108.15 on the business day in which the changes are made to the elections management system.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by

- 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8-15-2006 as an emergency; operative 8-15-2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-13-2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.45. Changes in the Mapping of Precincts to Statewide Political Jurisdictions.

Whenever the elections official completes changes in the assignment of precincts to any state or federal political jurisdiction, the elections official shall transmit an updated precinct file to Calvoter in accordance with Section 20108.15 by the close of the next business day.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Section 12260 Elections Code.

#### HISTORY

- New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

#### § 20108.50. National Change of Address Processing.

Except during the 90 days prior to a Federal election, the Secretary of State shall conduct monthly voter registration list maintenance using a change of address service or services based on the United States Postal Service National Change of Address (NCOA) database to identify address changes for registered voters. For records showing a change of address, the Secretary of State shall automatically transmit a change of address notice to the elections official in the county from or within which a voter has moved. Within five (5) business days of receipt of a change of address notice from the Secretary of State the elections official shall process the change of address notice pursuant to California Elections Code Section 2225 and Section 2226 and submit any changes in the registration record to Calvoter in accordance with Section 20108.15 and Section 20108.40.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Sections 2225 and 2226, Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8-15-2006 as an emergency; operative 8-15-2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-13-2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.51. Department of Motor Vehicles Change of Address Processing.

Within five (5) business days of receipt of Department of Motor Vehicles information identifying a change of address for a voter, the elections official shall update the voter registration record accordingly and submit the registration update file or full load file to Calvoter in accordance with Section 20108.15 and Section 20108.40.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

#### § 20108.55. State Death and Felony Status Records.

- (a) The Secretary of State shall, on a weekly basis, compare all voter registration records with records of deceased persons from the Department of Health Services and records of persons with felony convictions ineligible to vote from the Department of Corrections and Rehabilitation.
- (b) Whenever the Secretary of State receives new records of deceased persons from the Department of Health Services or records of persons with a felony conviction which renders them ineligible to vote from the Department of Corrections and Rehabilitation, the records shall be compared to the voter registration records in Calvoter to identify potential matches.

- (c) Upon identifying potential matches, the Secretary of State shall transmit notices of the potential matches in accordance with Section 20108.15 and Section 20108.40 to the elections officials in the counties in which the potential matches are identified.
- (d) Within five (5) business days of receipt of a notice of potential match the elections official shall take all necessary steps to determine whether or not the registration record matches a record of a deceased person or person with a felony conviction which renders that person ineligible to vote. If a match is confirmed by the elections official, the elections official shall update the registration records accordingly and submit a registration update file or full load file to Calvoter in accordance with Section 20108.15 and Section 20108.40.
- (e) Whenever the Secretary of State receives records of persons with a federal felony conviction which renders them ineligible to vote, the records shall be forwarded to the elections official of the person's county of residence. The elections official shall process the record in accordance with Section 20108.12.
- (f) County elections officials shall process county death records in accordance with California Elections Code Section 2205 and Section 20108.12 of this chapter.
- (g) County elections officials shall process county felony records in accordance with California Elections Code Section 2212.
- NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Sections 2205, 2206 and 2212, Elections Code.

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.60. Duplicate Registration Records.

- (a) The Secretary of State shall conduct checks at least once per month within the Calvoter statewide registration list to identify potential duplicate registrations for the same voter within that list, based on established rotating criteria. Upon identification of potential duplicate registration records, the Secretary of State shall automatically send an electronic notice to the county with the record that has the oldest date of registration.
- (b) Within five (5) business days of receipt of a notice of potential duplicate registration the elections official shall take all necessary steps to determine whether or not the registration record is a duplicate of an existing newer registration, and if a duplicate registration is confirmed, shall cancel the older duplicate registration and submit a registration update file or full load file to Calvoter in accordance with Section 20108.15 and Section 20108.40.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Sections 2168 and 2193, Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.65. Verification of Driver's License Numbers, State Identification Numbers, and Social Security Numbers Listed on Affidavits of Registration.

- (a) For the purposes of complying with the voter registration requirements of HAVA, a state identification number issued by the California Department of Motor Vehicles shall satisfy the same requirements as a driver's license number issued by the California Department of Motor Vehicles
- (b) If a new affidavit for voter registration contains both a California driver's license or state identification number and the last four digits of a social security number, the elections official shall verify the California driver's license or state identification number and disregard the social security number.
- (c) Prior to submitting a new voter registration record in a registration update file or full load file to Calvoter in accordance with Section 20108.15 and Section 20108.40, the elections official shall verify that the California driver's license or state identification number or social security number provided by a registrant in an affidavit of registration was issued to the individual named therein by verifying the number through Calvalidator.
- (d) If a California driver's license or state identification number or social security number has been previously verified through Calvalidator and the elections management system maintains the verification information, then the elections official is not required to verify the number again through Calvalidator.
- (e) If an elections official is unable to verify a California driver's license or state identification number or social security number provided by a registrant on a new affidavit of registration, the elections official shall make reasonable attempts to contact the registrant and obtain a valid identification number. If the elections official is unable to verify a California driver's license or state identification number or social security number and the registrant is otherwise eligible to vote, the elections official shall generate a unique identification number for the registrant in accordance with the *Calvoter and Calvalidator Data Standards* (05/2007).
- (f) If an elections official is unable to obtain a valid number after making reasonable attempts to contact the registrant and obtain such number, and if it is determined that the registrant has not been issued a California driver's license or state identification number or social security number, and the registrant is *not* otherwise eligible to vote, the elections official shall *not* generate a unique identification number for the registrant and shall *not* register the registrant to vote. If the elections official is unable to process the registration pursuant to this subsection, the elections official shall inform the affiant of the reason for the rejection in accordance with California Elections Code section 2153.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Section 2153, Elections Code.

#### HISTORY

- New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency, including amendment of subsection (e); operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

# § 20108.70. No Driver's License Number, State Identification Number, or Social Security Number Listed on Affidavit of Registration.

(a) If a registration record does not include a driver's license or state identification number issued by the California Department of Motor Vehicles or the last four digits of the social security number, the elections official shall determine whether a driver's license or state identification number is available through Calvalidator.

(b)(1) If a driver's license or state identification number has been issued and is available through Calvalidator, and Calvalidator identifies only one individual who possesses the last name, first name, and date of birth of the registrant, the elections official may enter that driver's license or state identification number in the registration record and update Calvoter in accordance with Section 20108.15 and Section 20108.40.

(2) If a driver's license or state identification number has been issued and is available through Calvalidator, and Calvalidator identifies more than one individual who possesses the last name, first name, and date of birth of the registrant, the elections official shall issue a unique identification number in accordance with the Calvoter and Calvalidator Data Standards (05/2007). The elections official shall enter the unique identification number into the elections management system and submit the registration record as a registration update file or full load file to Calvoter in accordance with Section 20108.15 and Section 20108.40. In addition, the elections official shall contact the voter to confirm whether one of the driver's license or state identification numbers identified by Calvalidator is correct. If the elections official is able to confirm a number, he or she shall replace the unique identification number issued pursuant to this paragraph with that driver's license or state identification number in the registration record and update Calvoter in accordance with Section 20108.15 and Section 20108.40.

(c) If a driver's license or state identification number cannot be identified or verified through Calvalidator and the registrant is otherwise eligible to vote, then a unique identification number shall be issued in accordance with the *Calvoter and Calvalidator Data Standards* (05/2007). The elections official shall enter the unique identification number into the elections management system and submit the registration record as a registration update file or full load file to Calvoter in accordance with Section 20108.15 and Section 20108.40.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, §

303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Section 2150(a)(7), Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- 3. Redesignation and amendment of subsection (b) as subsection (b)(2) and new subsection (b)(1) filed 4-24-2006 as an emergency; operative 4-24-2006 (Register 2006, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-22-2006 or emergency language will be repealed by operation of law on the following day.
- 4. Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 5. New section, including redesignation and amendment of subsection (b) as subsection (b)(2) and new subsection (b)(1) filed 4–24–2006 as a separate emergency, refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 6. New section refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 7. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.71. Replacement of Unique Identification Numbers.

If at any time the elections official is able to obtain the California driver's license or state identification number or social security number for a voter whose registration record contains only a unique identification number, the elections official shall verify that number in accordance with Section 20108.65, and if the elections official is able to validate that number, he or she shall replace the unique identification number in the registration record with the California driver's license or state identification number or social security number and update Calvoter in accordance with Section 20108.15 and Section 20108.40.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C. § 15483.

#### HISTORY

- 1. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## § 20108.75. Voting History.

Elections officials shall submit to the Secretary of State the voting history of all voters who cast a ballot in each statewide and Federal election by the 60th day after each election in accordance with the format and transmission requirements of Section 20108.15(b).

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252,  $\S$  303(a) (October 29, 2002) 116 Stat. 1666; and 42 U.S.C.  $\S$  15483.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4–10–2006 as an emergency; operative 4–10–2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8–8–2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by

- 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled refiled 12–13–2006 as an emergency; operative 12–13–2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–12–2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

#### § 20108.80. Certification of Elections Official.

Each elections official shall certify that the county in which the elections official has jurisdiction over the elections is in compliance with all provisions of this chapter for each Federal election. Elections officials shall do so by signing the certification form entitled *Certification of Elections Official (01/2007)*, which is hereby incorporated by reference, and submit it to the Secretary of State with the statement of vote required pursuant to California Elections Code section 15375. The certification form entitled *Certification of Elections Official (01/2007)* shall be provided by the Secretary of State by electronic or regular mail or facsimile transmission to each elections official along with the statement of vote reporting instructions on or before the third day following a Federal election. Each elections official shall submit to the Secretary of State an original, fully executed *Certification of Elections Official (01/2007)* with the copy of the certified statement of results required by California Elections Code section 15375.

NOTE: Authority cited: Section 12172.5, Government Code; and Section 10, Elections Code. Reference: Help America Vote Act of 2002, Pub. L. No. 107–252, § 303(a) (October 29, 2002) 116 Stat. 1666; 42 U.S.C. § 15483; and Sections 15372 and 15375, Elections Code.

#### HISTORY

- 1. New section filed 12–12–2005 as an emergency; operative 12–12–2005 (Register 2005, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–11–2006 or emergency language will be repealed by operation of law on the following day.
- New section refiled 4-10-2006 as an emergency; operative 4-10-2006 (Register 2006, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-2006 or emergency language will be repealed by operation of law on the following day.
- Repealed by operation of Government Code section 11346.1(e) (Register 2006, No. 33).
- 4. New section refiled 8–15–2006 as an emergency; operative 8–15–2006 (Register 2006, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–13–2006 or emergency language will be repealed by operation of law on the following day.
- 5. New section refiled refiled 12-13-2006 as an emergency; operative 12-13-2006 (Register 2006, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-12-2007 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 12–13–2006 order filed with OAL on 4–10–2007; withdrawn 5–22–2007. New section filed 5–23–2007 as an emergency; operative 5–23–2007 (Register 2007, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2007 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 5–23–2007 order transmitted to OAL 6–6–2007 and filed 6–13–2007 (Register 2007, No. 24).

## Chapter 3. Miscellaneous

NOTE: Authority cited: Sections 3301 and 35100, Corporations Code; and Sections 6503.7 and 12208, Government Code.

#### HISTORY

- 1. New Chapter 3 (Sections 20300–20308, not consecutive) amended and renumbered from Article 1 (Sections 6000–6006), Title 10 filed 9–2–77; effective thirtieth day thereafter (Register 77, No. 36).
- 2. Editorial renumbering of Chapter 3 (Sections 20300–20308, not consecutive) to Chapter 9 (Sections 21900–21914, not consecutive) (Register 80, No. 52). For prior history, see Register 78, No. 1.

## Chapter 4. Punch Cards and Ballot Paper

## Article 1. General

#### § 20200. Applicability of This Chapter.

The procedure specified hereunder shall be used by all persons (hereinafter "user") who wish to order the manufacture of their ballot cards for use in California elections.

These regulations also apply to those processes used by the Secretary of State to order the manufacture of unfinished ballot cards or of sheets, or to warehouse such sheets or unfinished ballot cards, for resale to local election jurisdictions.

NOTE: Authority cited: Sections 10002 and 10002.5, Elections Code. Reference: Sections 10002, 10002.5 and 10003, Elections Code.

#### HISTORY

1. New Chapter 4 (Articles 1–8, Sections 20200–20267, not consecutive) filed 2-11-81; effective thirtieth day thereafter (Register 81, No. 7).

## Article 2. Definitions

#### § 20203. Ballot Card.

Ballot card means card stock processed to final form for use by voters to punch, slot, or mark their choices in California elections.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20204. Card Stock.

Card stock means paper manufactured in accordance with certain specifications rendering it suitable for use in card reading equipment. NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

## § 20205. Finisher.

Finisher means a Secretary of State certified vendor which processes sheets or unfinished ballot cards to make ballot cards to be used in California elections.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20206. Format.

Format is a term used to distinguish the pattern of prescoring of unfinished ballot cards or ballot cards (eg. 312-, 228-, 52-Hole).

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20207. Manufacturer.

Manufacturer means a Secretary of State certified vendor which processes card stock to make sheets or unfinished ballot cards, or to make ballot cards by a continuous process involving a single machine, to be used in California elections.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20208. Release.

Release means:

- (a) Authorization by the Secretary of State to manufacture ballot cards for a user or to remove sheets or unfinished ballot cards from the warehouse for finishing or shipment to a finisher. Each release will specify the items listed in Article 5, or
- (b) Purchase order issued by the State of California to obtain sheets and unfinished ballot cards for warehousing by the Secretary of State and their subsequent resale to users.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

## § 20209. Roll.

Roll means card stock in web form, trimmed to a width of 3 1/4 inches or multiples thereof. Rolls are normally produced as an intermediate step in the production of unfinished ballot cards.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20210. Sheet.

Sheet means card stock, tinted for use in California elections, sufficiently large for more than one ballot card and later to be cut, after printing, into individual ballot cards (compare unfinished ballot card).

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20211. Tint.

Tint means a color and design prescribed by the Secretary of State which is printed on card stock for ballots to be used in California elections. Both color and design will be prescribed by the Secretary of State for each election.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20212. Unfinished Ballot Card.

Unfinished ballot card means card stock. Tinted for use in California elections, cut to the width and approximate length of a single ballot card, and requiring one or more steps in the production of a ballot card. Unfinished ballot cards may have a transitory existence in those processes in which ballot cards are produced directly from untinted card stock (compare sheet).

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20213. User.

User means any local election jurisdiction—county, city, or district—which conducts elections pursuant to the California Elections Code.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

#### § 20214. Warehouse.

Warehouse means any storage facility, including a building or portion of building, used for the storage of sheets or unfinished ballot cards until released to the finisher for production of ballot cards.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

# Article 3. Certification of Manufacturers and Finishers

## § 20220. Manufacturer and Finisher Certification Required.

As either a principal or subcontractor, no vendor shall manufacture or finish ballot cards, sheets, or unfinished ballot cards for use in California elections, and no vendor shall accept or solicit orders for such cards, sheets, or unfinished ballot cards prior to certification as a manufacturer or finisher by the Secretary of State.

NOTE: Authority and reference cited: Section 10002, Elections Code.

#### § 20221. Form of Application for Certification.

Applications for certification shall be made in writing to the Secretary of State in the form prescribed by the Secretary of State.

NOTE: Authority and reference cited: Section 10002, Elections Code.

#### § 20222. Inspections of Facilities Prior to Certification.

Prior to certifying a manufacturer or finisher, or to certifying a change in equipment or procedures, the Secretary of State may make inspections, with or without prior notice, of such facilities and records of such manufacturer or finisher as the Secretary of State deems necessary.

NOTE: Authority and reference cited: Section 10002, Elections Code.

## § 20223. Approval of Application.

The Secretary of State will approve in writing any applicant whom the Secretary of State determines to be capable of manufacturing or finishing ballot cards, sheets, rolls, or unfinished ballot cards, to Secretary of State specifications.

NOTE: Authority and reference cited: Section 10002, Elections Code.

#### § 20224. Revocation of Certification.

Certifications are valid until revoked by the Secretary of State. The Secretary of State will revoke a certification at any time upon determining tat the vendor is no longer capable of manufacturing or finishing ballot cards, sheets, or unfinished ballot cards or has failed to comply with these regulations without good cause which is acceptable to the Secretary of State

NOTE: Authority and reference cited: Section 10002, Elections Code.

## § 20225. Change in Manufacturing and Finishing Procedures.

No change in the equipment or procedures used by any manufacturer or finisher to manufacture or finish ballot cards, rolls, sheets, or unfinished ballot cards shall be made without the prior express written approval of the Secretary of State. Applications for such approval shall be in writing and shall show substantially the same information as the initial application for certification of the manufacturer or finisher.

NOTE: Authority and reference cited: Section 10002, Elections Code.

## § 20226. Publish List of Approved Manufacturers and Finishers.

The Secretary of State will publish a list of approved manufacturers and finishers no later than January 1 of each year and within ten days of any changes to the list.

NOTE: Authority and reference cited: Section 10002, Elections Code.

## § 20227. Exception to Application Requirement for Certain Manufacturers and Finishers.

For the purpose of implementing the provisions of this article, those manufacturers and finishers from whom the State of California has purchased sheets or unfinished ballot cards, or from whom users have purchased ballot cards prior to the effective date of this regulation, are authorized to manufacture or finish ballot cards, sheets, or unfinished ballot cards without having to submit an application for such authorization. The Secretary of State will include names of such manufacturers and finishers in the original list of approved manufacturers and finishers.

NOTE: Authority and reference cited: Section 10002, Elections Code.

## Article 4. Inspection of Facilities

## § 20230. Inspections of Facilities; Enforcement of Regulations.

To ensure compliance with these regulations, the Secretary of State will make biennial inspections, with or without prior notice, of each warehouse and of the facilities of each approved manufacturer or finisher, and of the records of any warehouse, manufacturer, or finisher as the Secretary of State deems necessary.

The Secretary of State reserves the right to make additional inspections and, should the Secretary of State find that any warehouse, manufacturer, or finisher is not or may not be in compliance with these regulations, will take corrective action necessary to enforce compliance. The action may include, for warehouses found to be not in compliance with these regulations, the requiring of the withdrawal of ballot cards, sheets, or unfinished ballot cards from such warehouse, and the transfer of such ballot materials to warehouses which are in compliance with these regulations. This action may also include, but is not limited to, the withdrawal of authorization of the manufacturer or finisher to manufacture, store, or finish ballot cards, sheets or unfinished ballot cards tinted for use in California elections.

NOTE: Authority and reference cited: Section 10002, Elections Code.

# Article 5. Request for and Release of Ballot Cards, Sheets, and Unfinished Ballot Cards

#### § 20235. Request for Ballot Card Release Required.

(a) Any user wishing to purchase ballot cards directly from the manufacturer, or wishing to have a finisher remove sheets or unfinished ballot

cards from a warehouse for finishing, shall request in writing a release from the Secretary of State.

- (b) No ballot cards, sheets, or unfinished ballot cards shall be manufactured, and no sheets or unfinished ballot cards shall be removed from the warehouse for finishing, prior to issuance of a specific release from the Secretary of State for such manufacturing or finishing. No ballot cards shall be manufactured or finished except in the format, tint, and quantity specified in the applicable release.
- (c) No tinted card stock shall be used for any purpose other than manufacturing ballot cards for use in California elections.
- (d) Manufacturers wishing to tint rolls in anticipation of receiving releases shall request in writing authorization for the Secretary of State to tint a sufficient number of rolls to meet expected orders. Such requests shall be substantially in the form of a request for release.
- (e) This requirement of a written request for a release will not prevent any user from making a request to obtain a release by telephone from the Secretary of State when time is of the essence. Such telephoned request shall be confirmed immediately in writing.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

## § 20236. Form of Request.

Each telephoned or written request shall contain the following information

- (a) Whether the user wishes to buy the ballot cards directly from a vendor or through the Secretary of State.
  - (b) Name and date of election.
- (c) (1) Name of finisher(s) if card stock is to be purchased from the Secretary of State; or
- (2) Name of ballot card manufacturer, and finisher(s) if different, if card stock is not to be purchased from the Secretary of State.
- (d) (1) Format of card if card stock is to be purchased from the Secretary of State; or
- (2) Format and tint of card if card stock is not to be purchased from the Secretary of State.

[The next page is 467.]

- (e) Quantity for each format and tint (quantity is to be in multiples of 1,000 cards, or in whole reams, if sheets).
  - (f) Name, address, and phone number of requestor.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10002.5, Elections Code.

#### HISTORY

 Amendment filed 7–23–81; effective thirtieth day thereafter (Register 81, No. 30).

## § 20237. Purchase of Ballot Cards from the Secretary of State; Request.

In order that the Secretary of State have sufficient time to purchase and warehouse sheets or unfinished ballot cards for those users who choose to purchase their ballot cards through the Secretary of State rather than directly from the manufacturer, the Secretary of State must receive notice of the quantity of ballot cards needed from such users no later than the 182nd day before the election in which the ballot cards are to be used. The Secretary of State will be unable to supply sheets or unfinished ballot cards to users who do not meet this deadline. It will be necessary for such users to obtain a release and to purchase directly from manufacturers. NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections Code.

## § 20238. Subcontracting of Manufacturing or Finishing.

If any part of any authorized order for manufacturing or finishing is to be subcontracted, then:

- (a) The subcontractor shall be a vendor approved by the Secretary of State
- (b) The principal vendor shall inform the Secretary of State of the subcontract and shall state the quantity of ballot cards, sheets, or unfinished ballot cards to be manufactured or finished under the subcontract.
- (c) The Secretary of State will issue releases in the same manner as for a principal contract.
- (d) Subcontractors shall be governed under these regulations in the same manner as principal contractors.

NOTE: Authority and reference cited: Sections 10002 and 10002.5, Elections

# Article 6. Manufacture of Ballot Cards, Sheets, and Unfinished Ballot Cards

### § 20245. Activity Report.

An Activity Report shall be made and shall set forth the following:

- (a) The process involved:
- (1) If the process involved is manufacturing, the report shall show whether sheets or unfinished ballot cards are being produced for shipment to a warehouse or finisher, or ballot cards are being produced for shipment to a user.
- (2) If the process involved is finishing, the report shall show that the sheets or unfinished ballot cards are withdrawn from the warehouse to produce ballot cards for shipment to a user.
  - (b) User Name.
  - (c) Release number; date of release; and quantity released.
  - (d) Purchase order number.
  - (e) Format or sheet dimension.
- (f) Tint. Supply information requested in g(1), g(2), g(3), g(4), or g(5) as appropriate:
- (g)(1) In the case of sheets or unfinished ballot cards received from a warehouse or manufacturer, or to be finished by the manufacturer:
- (A) Quantity received, or transferred to finishing equipment if to be finished by manufacturer.
  - (B) Quantity finished and shipped to user (show date).
  - (C) Quantity scrapped in process.
- (D) Quantity, in amounts of 1,000 per item, not finished and placed in warehouse or shipped to a warehouse specified by the user (show date).

- (E) Quantity, less than 1,000, manufactured and destroyed (show date)
- (2) In the case of ballot cards or unfinished ballot cards produced from rolls:
- (A) Dates each printing plate, used for overprinting tint, removed from and returned to storage; Name of each person involved; and, the old and new seal numbers.
  - (B) Press counter start number and date.
  - (C) Press counter stop number and date.
  - (D) Quantity manufactured.
  - (E) Quantity finished and shipped to user (show date).
  - (F) Quantity manufactured and shipped to finisher (show date).
  - (G) Quantity scrapped in process.
- (H) Quantity, in amounts of 1,000 per item, not finished and to warehouse or shipped to a warehouse specified by a user (show date).
- (I) Quantity, in amounts less than 1,000 per item, not finished and destroyed (show date).
  - (3) In the case of production of sheets:
- (A) Dates each printing plate, used for overprinting tint, removed from and returned to storage; Name of each person involved; and, the old and new seal numbers.
  - (B) Press counter start number and date.
  - (C) Press counter stop number and date.
  - (D) Number of sheets produced.
  - (E) Length and width of sheet.
  - (F) Number of ballot cards to be printed on each sheet.
  - (4) In the case of production of tinted rolls:
- (A) Dates each printing plate, used for overprinting tint, removed from and returned to storage; Name of each person involved; and, the old and new seal numbers.
  - (B) Number of rolls produced.
  - (C) Length of roll.
- (5) In the case of ballot cards or unfinished ballot cards produced from sheets or tinted rolls:
  - (A) Quantity manufactured.
  - (B) Quantity finished and shipped to user (show date).
  - (C) Quantity manufactured and shipped to finisher (show date).
  - (D) Quantity scrapped in process.
- (E) Quantity, in amounts of 1,000 per item, not finished and to warehouse or shipped to a warehouse specified by a user (show date).
- (F) Quantity, in amounts less than 1,000 per item, not finished and destroyed (show date).

NOTE: Authority and reference cited: Section 10002, Elections Code.

#### § 20247. Warehouse Inventory Control Record.

- A Warehouse Inventory Control Record shall be maintained by tint and format, or by tint and sheet dimension, and shall show:
  - (a) Release number.
  - (b) Purchase order number.
  - (c) Format or sheet dimension.
  - (d) Tint.
  - (e) Activity date.
  - (f) Quantity placed in warehouse.
  - (g) Quantity removed.
- (h) Balance on hand in reams or number of unfinished ballot cards. Note: Authority cited: Section 10002 Elections Code. Reference: Sections 10002 and 10003, Elections Code.

## § 20249. Printing Plate Secured with Seal; Report.

- (a) When not in use, printing plates used to overprint a tint on card stock for use in California elections shall be kept either in an enclosure which shall be secured with a numbered seal, or in other enclosure approved in writing by the Secretary of State.
- (b) Each time the printing plates are removed from storage, used for tinting or returned to storage, an Activity Report shall be completed to record the transaction and use.

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NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

#### § 20250. Scrap Destruction; Report.

During the manufacturing process, all scrap shall be cut or otherwise rendered unusable as ballot cards after each shift. Activity Report entries shall be prepared at the time of destruction.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

#### § 20251. Unused Unfinished Ballot Cards; Report.

- (a) Unused unfinished ballot cards in units of 1,000 shall be returned to the warehouse and the quantity entered on the Activity Report and the Warehouse Inventory Control Record.
- (b) Unused unfinished ballot cards in quantities less than 1,000 shall be rendered unusable as ballot cards, and an Activity Report entry setting forth destruction shall be made.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

#### § 20252. Unused Sheets; Report.

- (a) Unused sheets, in ream lots, shall be returned to the warehouse and the quantity shall be entered on the Activity Report and the Warehouse Inventory Control Record.
- (b) Unused sheets in less than ream—lot quantity shall be rendered unusable as ballot cards, and an Activity Report entry setting forth such destruction shall be made.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

## § 20253. Activity Reports Transmitted to the Secretary of State.

Completed Activity Reports shall be sent to the Secretary of State by each manufacturer or finisher within seven (7) days of the manufacturer's or finisher's completion of any work authorized by any release.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003. Elections Code.

## § 20254. Physical Inventories.

Physical inventories shall be taken on January 15th, April 15th, July 15th, and October 15th of each year. Inventories shall be completed and a report in writing showing the quantity of each item in the warehouse shall be sent to the Secretary of State within seven (7) days of these dates. Note: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

# Article 7. Distribution of Ballot Cards, Sheets, and Unfinished Ballot Cards

## § 20255. Storage; Security.

All tinted card stock not shipped from the manufacturer's facility shall remain in a secured area of the manufacturer's facility until converted to ballot cards, shipped, or placed in a warehouse. All sheets or unfinished ballot cards which are to be finished by the manufacturer will be placed in a warehouse unless finishing directly follows manufacturing. Finishers shall store in a warehouse all unfinished ballot cards they receive from a manufacturer until they are ready to finish them.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

#### § 20256. Packaging Ballot Cards.

All ballot cards shall be packaged in accordance with the instructions of the user.

NOTE: Authority and reference cited: Section 10002, Elections Code.

#### § 20257. Shipment of Ballot Cards; Report.

Upon finishing ballot cards, each finisher shall complete an Activity Report, and send it to the Secretary of State as prescribed in Section 20253. Upon receipt, each user shall report, independently of the finisher's report, the quantity of ballot cards of each format and tint received from the finisher. The shipment shall be identified by release number(s).

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

### § 20258. Shipment of Unfinished Ballot Cards; Report.

Manufacturers shipping unfinished ballot cards shall complete an Activity Report, and:

- (a) The unfinished ballot cards shall be packaged in cardboard containers which completely enclose them, one thousand (1,000) unfinished ballot cards per container.
- (b) Such containers shall be placed in humidity-proof cardboard cases, five to a case.
- (c) Each such case shall have affixed thereto a label containing the following information:
  - (1) Format.
  - (2) Tint.
  - (3) Purchase Order Number.
  - (4) Date of Shipment.
  - (5) Factory Order Number.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

## § 20259. Shipment of Sheets; Report.

Manufacturers shipping sheets shall complete an Activity Report and:

- (a) Sheets shall be packaged in multiples of whole reams, ream marked.
- (b) Each such package shall be wrapped in waterproof paper covered with kraft paper wrapper, which bears a label stating:
  - (1) Sheet size.
  - (2) Tint.
  - (3) Number of Reams in the package.
  - (4) Direction of grain.
  - (5) Purchase Order Number.
  - (6) Date of Shipment.
  - (7) Factory Order Number.
- (c) All sheets shall be shipped in accordance with the instructions of the user.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002 and 10003, Elections Code.

#### § 20260. Transportation Methods.

Unfinished ballot cards or sheets shall be shipped by covered motor freight, by train, or by air. Covered motor freight shall not include pick-ups, flat-beds, or stake-side vehicles whether or not covered by a tarpaulin.

NOTE: Authority and reference cited: Section 10002, Elections Code.

## § 20261. Security; Responsibility.

The shipper is charged with full responsibility for the security of all ballot cards, sheets, or unfinished ballot cards until acceptance of delivery at destination.

NOTE: Authority and reference cited: Section 10002, Elections Code.

## § 20262. Shipment of Sheets or Unfinished Ballot Cards.

Manufacturers shipping sheets or unfinished ballot cards shall report to the Secretary of State immediately upon shipment the quantity shipped and the scheduled delivery date.

NOTE: Authority cited: Section 10002, Elections Code. Reference: Sections 10002, 10002.5 and 10003, Elections Code.

## Article 8. Warehouse Access Control

## § 20265. Warehouse Security.

At all times, a warehouse shall be secured with a numbered seal. NOTE: Authority and reference cited: Section 10002, Elections Code.

### § 20266. Authorization for Access.

(a) A letter listing those persons proposed for authorized access to each warehouse shall be submitted to the Secretary of State who will respond by letter and will add the names of the Secretary of State personnel authorized to enter the warehouse. A copy of this letter shall be placed in the

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warehouse inventory control record. Access shall be limited to those persons named therein.

(b) Secretary of State personnel who are listed as authorized for access may, when visiting a warehouse site, authorize additional persons to have temporary access during the visit.

NOTE: Authority and reference cited: Section 10002, Elections Code.

### § 20267. Access Log.

An access log shall be maintained within the area of the warehouse wherein the sheets or unfinished ballot cards are stored. This log shall record:

- (a) The name of each person entering the warehouse.
- (b) The seal number destroyed in entering.
- (c) The seal number resealing the warehouse.

NOTE: Authority and reference cited: Section 10002, Elections Code.

## Chapter 5. Election Petition Signature Verification Random Sampling Verification Methodology

## Article 1. General Provisions

#### § 20510. Purpose.

The purpose of this chapter is to establish procedures for determining the projected number of valid signatures on an elections petition based on a verification of a random sampling of the petition signatures.

NOTE: Authority cited: Sections 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

#### HISTORY

1. New chapter 5, article 1 and section filed 9–28–93; operative 10–28–93 (Register 93, No. 40).

## § 20511. Scope.

This chapter shall apply to the verification of signatures on the following petitions:

- (a) Petitions circulated pursuant to Division 5 (commencing with Section 3500) of the California Elections Code.
- (b) Signatures in Lieu of Filing Fee petitions circulated pursuant to Chapter 5 of Division 6 (commencing with Section 6400) of the California Elections Code.
- (c) Independent nomination petitions circulated pursuant to Chapter 6 of Division 6 (commencing with Section 6800) of the California Elections Code.
- (d) Recall petitions circulated pursuant to Division 16 (commencing with Section 27000) of the California Elections Code.
- (e) Any other elections petition which is permitted by law to use a random sampling methodology to verify the validity of the signatures on the petition.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

#### HISTORY

1. New section filed 9-28-93; operative 10-28-93 (Register 93, No. 40).

### § 20512. Effective Date.

The provisions of this chapter shall apply to the election petitions set forth in Section 20511, above, filed with the elections official on or after the effective date of these regulations.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

#### HISTORY

1. New section filed 9-28-93; operative 10-28-93 (Register 93, No. 40).

## Article 2. Definitions

#### § 20520. Raw Count.

"Raw Count" means the total number of unverified signatures affixed to a petition and submitted to an elections official.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

#### HISTORY

1. New article 2 and section filed 9–28–93; operative 10–28–93 (Register 93, No. 40).

#### § 20521. Random Sample of Signatures.

"Random Sample of Signatures" means signatures selected at random using a computerized random numbers generator. The sample of signatures to be verified shall be drawn in such manner that every signature filed with the elections official shall be given equal opportunity to be included in the sample. The percentage of signatures to be randomly sampled is specified in the Elections Code sections relating to the involved types of petitions.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

#### HISTORY

1. New section filed 9-28-93; operative 10-28-93 (Register 93, No. 40).

## Article 3. Random Sampling Formula for Verification of Elections Petitions

## § 20530. Signature Verification.

The following steps shall be followed when verifying signatures on an elections petition based on an authorized use of a random sample of the petition signatures.

- (a) Identify the random sample percentage from the applicable statute and apply it to the petition, thereby defining the random sample.
- (b) Verify the signatures in the sample and determine the number of valid signatures in that sample.
- (1) A signer of an elections petition may withdraw his/her signature from the petitions prior to the petition's filing pursuant to Elections Code sections 43, 4089, 5352 and 27304. If the withdrawn signature is drawn as part of the random sample, the signature is treated as a signature that is deemed not valid.
- (c) Divide the number of valid signatures in the sample by the total number of signatures in the sample. Compute as a percentage to two decimal places.
- (d) Multiply the raw count by the number computed in Section 20530(c), above. Round up to the nearest whole number.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Section 43, 3520, 3708, 3755, 4009, 4054, 4089, 4091, 5153.5, 5200, 5352, 6555.5, 6831.1, 27101, 27215 and 27304, Elections Code. HISTORY

1. New article 3 and section filed 9–28–93; operative 10–28–93 (Register 93, No. 40).

#### § 20531. Duplicate Signatures.

- (a) Divide the raw count by the sample size to determine the value of each signature. Compute to four decimal places.
- (b) To determine the weight to be assigned to each duplicate signature found in the sample, multiply the value of each signature computed in Section 20531(a), above, times the computation in Section 20531(a), above, minus one.
- (c) To determine the number of estimated duplicate signatures in the entire petition, multiply the number of duplicate signatures found in the random sample by the weight established in Section 20531(b), above. Round up to the nearest whole number.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

1. New section filed 9-28-93; operative 10-28-93 (Register 93, No. 40).

## § 20532. Number of Valid Signatures Based on the Verification of a Sampling of the Signatures.

(a) To determine the number of verified signatures based on the random sampling, subtract Section 20531(c) from Section 20530(d).

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

#### HISTORY

1. New section filed 9-28-93; operative 10-28-93 (Register 93, No. 40).

## § 20533. Elections Petitions Allowed to be Verified on an On-Going Basis Before the Close of Filing.

- (a) Signatures in lieu of filing fee petitions verified pursuant to Elections Code section 6555.5 may be submitted to the elections official on an on-going basis prior to the close of the circulation period. The elections official may verify signatures using the random sampling methodology provided in these regulations, except that each submission must include the minimum number of signatures set forth in Elections Code section 6555.5.
- (b) The elections official shall aggregate the statistically-computed signature counts for each submission to determine the total number of valid signatures on the petition.
- (c) When verifying a signature in lieu of filing fee petition the elections official may use the random sampling methodology to verify signatures, the full signature verification method, or both methods. If both methods are used to verify signatures on a petition, the results shall be combined to determine the number of valid signatures on the petition.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Section 6555.5, Elections Code.

#### HISTORY

1. New section filed 9-28-93; operative 10-28-93 (Register 93, No. 40).

## Article 4. Miscellaneous

## § 20540. Example.

(a) An initiative petition was filed in County X. The elections official counted the number of signatures affixed to the petition and determined the raw count to be 24,034. The required three percent random sample for initiative petitions was drawn and 722 signatures were randomly selected. The signatures were verified and the results were as follows:

 $33.2881 \times 32.2881 =$ 

-		
	Raw count:	24,034 signatures
	Random sample (3%):	722 signatures
	Signatures found valid in sample:	516 signatures
	Signatures found not valid in sample:	205 signatures
	Signatures requested to be withdrawn	_
	found in sample (included in 205	
	signatures deemed not valid):	1 signature
	Number of duplicate signatures	
	found in sample:	2 signatures
	<b>F</b>	<b>6</b> ·
1.	The elections official computed the	
	percent of valid signatures by dividing the	
	total number of signatures found valid in the	he
	sample, 516, by the total number of	$516 \div 722 = 71.47\%$
	signatures in the sample, 722.	
2.	The elections official then multiplied the ra	aw
	count of 24,034 by the sample validity rate	$24,034 \times .7147 =$
	of 71.47% (or .7147) to determine the	17,177.0990
	number of uncorrected total valid signature	es. (Round up to 17,178)
	The result was 17,178.	
3.	To calculate the duplicate signature factor,	
	the elections official divided the raw count	24,034 + 722 = 33.288

To determine the weight assigned to each

elections official multiplied the duplicate

duplicate signature found in the sample, the

signature factor computed at #3., above, by the factor computed at #3., above, minus one

1.074.8095 (33.2881 - 1.0000 =32.2881)

5. The elections official then multiplied the number calculated in #4., above, times the number of duplicate signatures found in the sample (2).

 $1.074.8095 \times 2 =$ 2,149.6190 (Round up to 2,150)

6. The elections official determined the number of valid signatures based on the random sample by subtracting the figure computed at Step #5., above, from the figure computed at Step #2., above.

17.178 - 2.150 =15,028

In this example, out of the 24,034 initiative signatures submitted to the elections official, 15,028 signatures were projected to be valid based on the random sample of signatures.

NOTE: Authority cited: Section 12172.5, Government Code and Section 3520, Elections Code. Reference: Sections 3520, 3708, 3755, 4009, 4054, 4091, 5153.5, 5200, 6555.5, 6831.1, 27101 and 27215, Elections Code.

#### HISTORY

1. New article 4 and section filed 9–28–93; operative 10–28–93 (Register 93, No.

## Chapter 6. Escrow of Ballot Tally Software **Program Source Codes**

## Article 1. General Purpose and Effective Date

#### § 20610. Application of Regulations.

These regulations shall apply to every election, all or any portion of which is conducted under the authority of the Elections Code, by any jurisdiction which conducts elections and canvasses those elections by means of ballot tally software programs.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

### HISTORY

1. New chapter 6, article 1 and section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20611. Reasons for Placing Software into Escrow.

Ballot tally software program source code(s) (or hereinafter: 'source code') shall be placed in escrow in order to:

- (a) Protect and enhance the integrity of elections by ensuring that ballot tally software programs used in California elections have not been tampered with or otherwise altered and that elections continue to accurately reflect the will of the voters as expressed by their votes on computer-read ballots;
- (b) Create a record of all versions, including changes or modifications of the source code materials placed in escrow;
- (c) Create a record of all applications for access to the source code materials placed in escrow;
- (d) Unless otherwise superseded by a contract between a vendor and an election jurisdiction, preserve the necessary source code information to permit the election jurisdiction to continue the use and maintenance of the source code in the event the vendor is unable, or otherwise fails, to provide maintenance.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

#### § 20612. Use after Effective Date.

Once Chapter 6 of Division 7 of Title 2 of the California Code of Regulations becomes effective, the source code for any ballot tally software program intended for use by an election jurisdiction in California must first have been placed in an approved escrow facility. If the source code has not been placed in an approved escrow facility, no ballot tally software program derived from that source code may be used to tally any

Page 470 Register 95, No. 32; 8-11-95 votes in any California election conducted pursuant to the Elections Code.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

## § 20613. Escrow Facility Must be Approved.

For purposes of this chapter, no escrow facility, including any which may have been providing such services for any vendor prior to the effective date of these regulations, may serve as an escrow facility for purposes of these regulations after the effective date without having first been approved by the Secretary of State pursuant to these regulations. NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

## HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## Article 2. Definitions

## § 20620. Software.

"Software," generally, refers to "computer programs," a collection of instructions coded according to specific rules and in a specific sequence, which tell the computer equipment what to do and when and how to do it.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New article 2 and section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

#### § 20621. Ballot Tally Software Program.

The "ballot tally software program" consists of the computer program or programs used to tally voted ballots in an election.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20622. Ballot Tally Program Source Code(s).

"Ballot tally software program source code(s)" or "source code" consists of the computer program or programs used to translate or otherwise recognize votes, accumulate the total of those votes, and store that accumulated total to a storage media for later retrieval and reporting, and includes the version of a computer program in which the programmer's original programming statements are expressed in a source language (e.g. Ada, Assembler, COBOL, Fortran, etc.) which must be compiled or assembled and linked into equivalent machine–executable object code, thereby resulting in an executable software program.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

## HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20623. Escrow.

"Escrow" is the process by which a third party having no direct or indirect financial interest with a vendor holds, for safekeeping, the source code, including all changes or modifications and new or amended versions. A financial interest would exist if the third party, for instance, included a vendor's stocks in its portfolio.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

### § 20624. Escrow Facility.

"Escrow facility" is the physical location in which the source code may be stored. No election jurisdiction may act as an escrow facility to store its own source code.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

### § 20625. Escrow Company.

"Escrow company," for the purposes of this chapter, is any business certified by the Secretary of State to store source code.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20626. Escrow Agreement.

An "escrow agreement" is a contract or subagreement to hold each source code in escrow. The contract may be a master contract with separate subagreements to hold each source code in escrow or an individual contract entered into for each source code placed in escrow.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

#### § 20627. Vendor.

A "vendor" is any person, group, organization, company, or entity, whether or not incorporated, who sells, leases, or grants use of, with or without compensation therefor, a ballot tally software program for use by jurisdictions which conduct elections subject to these regulations. The term "vendor" includes election jurisdictions which provide or maintain ballot tally software programs for their own use or for the use of others. NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## Article 3. The Secretary of State

A. Certify Escrow Company

#### § 20630. Consider all Applications.

The Secretary of State shall consider all applicants for certification as an escrow company and shall certify, in writing, those that meet the minimum requirements set forth in these regulations.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New article 3 and section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

B. Approve Escrow Facility

## § 20631. Review Procedures.

Prior to any approval, the Secretary of State shall review, for conformance with these regulations, the procedures proposed by each applicant escrow company for operation of its escrow facilities.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20632. Escrow Company Must be Certified and Escrow Facility Must be Approved.

No escrow facility may be used for escrow of any source code until certification has been granted to the escrow company and approval of the escrow facility for such use is received by the escrow company and displayed pursuant to Section 20661, subsection (a), of this chapter.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20633. Review and Processing of Applications for Certification or Approval.

(a) Within ten working days after receipt of an application for certification as an escrow company or approval of an escrow facility, the Secre-

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tary of State shall inform the applicant in writing whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(b) Within thirty working days of receipt of a completed application, the Secretary of State will inform the applicant whether the application for certification or approval has been approved or denied.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 15376, Government Code and Section 19103, Elections Code.

#### HISTORY

- 1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).
  - C. Review of Facilities after Certification

#### § 20635. Periodic Inspections of Escrow Facilities.

- (a) To ensure compliance with these regulations, the Secretary of State shall cause periodic inspections during normal business hours, with or without prior notice, of facilities used to escrow source code(s) and of such records maintained as required by this chapter.
- (b) The Secretary of State reserves the right to inspect any facility for which a new application for approval is made.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

#### § 20636. Action if Facility not in Compliance.

If the Secretary of State determines that any escrow facility is not in compliance with these regulations and other applicable law, he or she shall:

- (a) Withdraw approval of the escrow facility to store one or more source code(s); and,
- (b) Order the temporary removal of source code(s) from such facility, and the transfer of such source code(s) to facilities which are in compliance.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

## HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20637. Procedure to Withdraw Approval from Escrow Facility.

- (a) No action to withdraw approval of a facility to store ballot tally software program source code shall commence until the Secretary of State has mailed a written 30–day notice. The notice shall be sent to the escrow company, the escrow facility, and the vendor(s) storing source code(s) at the facility.
- (b) Within ten days of the date of mailing of the 30-day notice, a representative of the escrow facility may request an administrative hearing with the Secretary of State to appeal the determination of non-compliance. The escrow facility shall notify the vendor that a hearing has been requested. If the vendor has received notice of request for administrative hearing, he or she shall notify the election jurisdiction, no later than three days after receipt of such notice, that a hearing has been requested and shall send copies of such notification(s) to the Secretary of State.
- (c) Any vendor receiving a notice pursuant to subdivision (a) shall within 10 days of the date of the notice advise in writing any election jurisdiction using a ballot tally software program derived from the source code which has been placed in escrow that the Secretary of State will conduct an administrative hearing. The vendor shall notify the affected election jurisdiction(s) that a hearing has been requested.
- (d) Within ten days of receipt of the request for an administrative hearing, the Secretary of State shall schedule the hearing and notify the representative of the escrow facility, the vendor, and other interested parties.
- (e) Within five days after the administrative hearing, the Secretary of State shall notify the representative of the escrow facility, the vendor, and other interested parties of the decision on the appeal.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20638. Escrow Company to Comply when Escrow Facility Approval Withdrawn.

Once the Secretary of State has issued an order to remove or transfer the ballot tally software program source code and materials, the escrow company shall comply with the order within 24 hours of receipt of the order.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

- 1. New section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).
  - D. List of Approved Companies and Facilities

## § 20639. List of Certified Escrow Companies and Approved Escrow Facilities.

The Secretary of State shall mail, by first class mail, to the chairperson of each county board of supervisors, to each county chief elections official, to each certified escrow company, to each approved escrow facility, and to each vendor of ballot tally software source code, a complete list of all certified escrow companies and their facilities approved for use in California no later than January 30 of each year, and within ten days of any change affecting the list.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## Article 4. The Vendor

A. General

## § 20640. Separation of Vendor Interests from Escrow Company.

The vendor, its officers, and directors, shall not hold or exercise any direct or indirect financial interest(s) in the escrow company.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New article 4 and section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

#### § 20641. Vendor Certification of Deposit.

- (a) Within five working days of any submission of source code materials, each vendor shall certify to each affected election jurisdiction, with a copy to the Secretary of State, that they have placed their source code or codes in escrow. The certification shall include a description of submitted materials sufficient to distinguish them from all other submissions.
  - (b) The certification shall state:
- (1) That all source code information and materials required by these regulations and other applicable law are included in the deposit.
- (2) The name of the certified escrow company and the location of the approved escrow facility where the source code materials have been placed in escrow.
- (c) Any election jurisdiction which thereafter may desire to contract for use of a ballot tally software program shall be provided with a copy of the certificate as a condition precedent to the execution of the contract. NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

- 1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).
- B. What the Vendor is to Submit to the Escrow Company for Placement into the Escrow Facility

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### § 20642. Requirements for Submission.

- (a) The vendor shall submit the source code, as defined in Article 2, to a certified escrow company for placement in the approved escrow facility.
- (b) For each source code, the materials placed in escrow must be sufficient to maintain every related ballot tally software program used or intended to be used by any election jurisdiction.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

- 1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).
  - C. Updates to Materials in Escrow

## § 20645. Updates to Submission.

- (a) Once used to tally ballots in any election, no source code materials in escrow may be changed or modified. Except as specified in this section, change or modification requires that a new escrow be established.
- (b) Once used to tally ballots in any election, the unchanged source code shall be retained, at a minimum, for the period of retention required by the Elections Code for other election materials at the same election. NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20646. Deposit Software Modifications into Escrow.

- (a) Prior to being used to tally ballots in any election, the vendor shall submit all source code changes or modifications into escrow in the same manner and under the same conditions in which the source code materials originally were placed in escrow.
- (b) Within five working days of the submission to the escrow facility of the changed or modified source code, the vendor shall notify each affected election jurisdiction as provided for in Section 20641, with a copy to the Secretary of State, that the source code placed in escrow has been changed or modified.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

## Article 5. The Escrow Company

A. Minimum Requirements and Standards of Performance

## § 20650. Minimum Requirements for Certification.

A certified escrow company shall:

- (a) Be authorized by the Secretary of State to operate its escrow facilities.
- (b) Submit a copy of every escrow agreement to the Secretary of State. The copy shall be submitted by the escrow company within ten days of the date the escrow agreement is signed.
- (c) For every submission of an escrow agreement, maintain records which sufficiently identify and describe the materials deposited in escrow to determine compliance with the agreement between the vendor and the escrow company. The escrow company shall not be required to verify the content of the materials submitted.
- (d) Notify, in writing, the Secretary of State within five days of the initial deposit of source code. The notice shall include the name of the vendor and a list describing each of the items comprising the initial submission
- (e) Notify, in writing, the Secretary of State within five days of the termination of any escrow agreement.
- (f) Notify, in writing, the Secretary of State within five days of the change of the name of the company or the name of the escrow facility, together with the address, phone number, and name of the contact person for the company and/or facility.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New article 5 and section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20651. Separation of Interest of Escrow Company with Vendor.

The escrow company, its officers, and directors, shall not hold or exercise any direct or indirect financial interest(s) in the vendor.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

B. Start-Up

## § 20652. Escrow Company Certification and Escrow Facility Approval Required.

Applications for certification as an escrow company and for approval of each escrow facility shall be made in writing to the Secretary of State on the form contained in Appendix A: Forms of Application for Certification and Approval (June 1995).

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

### § 20653. Approval for Additional Facilities Required.

Applications for approval of an escrow facility not included in the original application shall be made in writing to the Secretary of State on the form contained in Appendix A: Forms of Application for Certification and Approval (June 1995).

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

- 1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).
  - C. Termination of Certification

#### § 20654. Term of Certification.

Certification remains valid until surrendered by the escrow company or until revoked by the Secretary of State.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

## HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## Article 6. The Escrow Facility

A. Minimum Specifications

## § 20660. Location of Approved Escrow Facilities.

Each approved escrow facility shall be physically located within the State of California.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New article 6 and section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

### § 20661. Escrow Facility to Post Notice of Approval.

- (a) The approved escrow facility shall post a copy of the 'Notice of Approval (June 1995)' (see Appendix B: Form of Notice of Approval.) in its business office. The notice shall be posted in a place conspicuous to the public and must also be located so that it is easily readable by members of the public doing business at the escrow facility.
- (b) No ballot tally software program source code shall be placed in escrow in the facility until the Notice of Approval is posted according to this section.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

#### § 20662. Requirements for Escrow Facilities.

For all ballot tally software program source code materials each escrow facility shall:

- (a) Provide a secure and safe environment in which the humidity, temperature, and air filtration are controlled on a 24-hours-a-day, 7-days-a-week basis. The humidity shall be maintained at 35 percent, plus or minus 2 percent, and the temperature shall be maintained at 65 degrees, plus or minus 3 degrees, Fahrenheit.
- (b) Maintain storage away from electrical, magnetic, and other fields which could potentially damage computer media over time.
- (c) Have backup capability to maintain the properly secured environment in the event of power outages or natural disasters.
- (d) Maintain physical security of the escrow facility with controlled and restricted access to source code materials placed in escrow.
- (e) Store each source code separately. The source code materials placed in escrow shall be secured in a single container and no other material shall be placed in that container.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

B. Termination of Approval

#### § 20663. Continued Approval of Escrow Facility.

Approval remains valid until surrendered by the escrow company or until revoked by the Secretary of State.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

## Article 7. Access to and Review of Materials in Escrow

## § 20670. Conditions for Access to Materials Placed in Escrow.

No access to materials placed in escrow shall occur except as specified in (a) or (b) of this section.

- (a) Upon an order of an appropriate court in the course of an investigation or prosecution regarding vote counting equipment or procedures. The court order shall specify the procedures for reviewing the materials in escrow, including, but not limited to, the name of each person permitted to review the materials, the person or persons responsible for guaranteeing that the materials are not tampered with or otherwise altered, and the time, place, and other conditions under which the materials may be reviewed.
- (b) Upon a finding by the Secretary of State that an escrow facility or escrow company is unable or unwilling to maintain materials in escrow in compliance with these regulations.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

## HISTORY

1. New article 7 and section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## § 20671. Verification of Materials Placed in Escrow.

The Secretary of State may, in furtherance of these regulations, for cause at any time, audit source code materials placed in escrow with an approved escrow facility or a facility for which approval has been withdrawn pursuant to these regulations, for purposes of verifying the contents.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## $\S$ 20672. Integrity of Materials Placed in Escrow.

No person having access to the ballot tally software program source code materials shall interfere with or prevent the escrow representative from monitoring the security and the integrity of the ballot tally software program source code materials.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

## **Article 8. The Escrow Agreement**

A. Minimum Elements

### § 20680. Vendor Agreement for Escrow Deposits.

A vendor may enter into a written agreement with any certified escrow company for deposit of each source code.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New article 8 and section filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

#### § 20681. Minimum Terms Required in Agreement.

The terms of the agreement between the vendor and the escrow company shall include, but not be limited to, the following elements:

- (a) Conflict in Financial Interest:
- (1) The escrow company, its officers, and directors, do not hold or exercise any direct or indirect financial interest(s) in the vendor.
- (2) If a condition in financial interest(s) as specified in this section arises, the escrow company shall:
  - (a) Advise the vendor of the conflict in financial interest.
- (b) Immediately notify any affected election jurisdictions of the conflict in financial interest.
- (c) Transfer the ballot tally software program source code materials in escrow to another certified escrow company which has no financial interest(s) as specified in this article with the vendor.
- (3) The vendor, its officer, and directors, do not hold or exercise any direct or indirect financial interest(s) in this escrow company.
- (4) If a conflict in financial interest(s) as specified in this section arises, the vendor shall:
  - (a) Advise the escrow company of the conflict in financial interest.
- (b) Immediately notify any affected election jurisdictions of the conflict in financial interest.
- (c) Transfer the ballot tally software program source code materials in escrow to another certified escrow company which has no financial interest(s) as specified in the article with the vendor.
  - (b) Retention of Election Materials:
- (1) Records maintained by the escrow company pursuant to these regulations and other applicable law shall be retained for the term of the escrow agreement, and for an additional period of 22 months after any election at which the source code was used. The vendor shall be entitled at reasonable times during normal business hours and upon reasonable notice to the escrow company during the term of the escrow agreement to inspect the records of the escrow company pertaining to the escrow agreement.
- (2) If the Secretary of State informs the escrow company that an election contest, or a criminal prosecution involving fraudulent use of the ballot tally computer program, has been timely commenced, then the source code shall not be removed from the escrow facility until the later condition of either the 22–month period has expired or the Secretary of State has determined and notified the escrow company that the necessity for retention has ended.
- (3) The escrow agreement shall provide for the disposition of the materials placed in escrow pursuant to subdivision (b)(1) or (b)(2).
  - (c) Change or Modification to Source Code:
- (1) No source code placed in escrow shall be changed or modified except as permitted in this chapter.
  - (D) Duration and Renewal:

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- (1) The time period for the escrow agreement and the date for renewal of the agreement.
- (2) A provision that the escrow agreement may be renewed for additional periods.
- (3) The due date for renewal shall be no later than 30 days before expiration of the escrow agreement. In the event that the contract is not renewed, the escrow company shall so notify the vendor and the Secretary of State.
- (4) In the event that a vendor does not enter into an escrow arrangement with the escrow company to renew the escrow contract, an election jurisdiction or jurisdictions may negotiate directly with an approved escrow company for continuance of the escrow, and shall so notify the Secretary of State and the vendor in writing within 30 days of the new contract.
  - (e) Access to Materials in Escrow:
- (1) In the event that the escrow company is notified by an election jurisdiction of the occurrence of a condition as defined in the escrow agreement allowing access to ballot tally software program source code materials, the escrow company shall immediately so notify the vendor and the Secretary of State and shall provide a copy of the notice from the election jurisdiction.
- (2) If the vendor provides an objection in writing within 10 days of the mailing or other service of the notice to the vendor, the escrow company shall not allow access. If the vendor does not object as provided in this subdivision, the escrow company shall permit access to the deposit to the election jurisdiction.

For the purposes of this section "object" or "objection" means the delivery by certified mail of an affidavit or declaration to the escrow company by the vendor, with a copy to the election jurisdiction which is demanding access and a copy to the Secretary of State. The objection shall state that an access condition either has not occurred or no longer exists. Upon receipt of the objection, the escrow company shall not permit access and shall continue to store the deposit pursuant to the escrow agreement.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

1. New section filed 8-8-95; operative 9-7-95 (Register 95, No. 32).

B. Statement of Non-Liability

## § 20682. State Not Liable for Any Costs or Any Other's Actions.

Neither the Secretary of State nor the State of California shall be responsible for any of the fees claimed by the vendor, election jurisdictions, or the escrow company to establish the escrow contract. Further, neither the Secretary of State nor the State of California is a party to the agreement and shall not incur any liability for the actions of the parties involved in this escrow agreement.

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

#### HISTORY

 New section and Appendices A–B filed 8–8–95; operative 9–7–95 (Register 95, No. 32).

## Appendix A. Forms of Application for Certification and Approval.

Application for Certification as an Escrow Company

I/We hereby apply for certification by the Secretary of State of California as an escrow company for the purpose of holding ballot tally software program source codes in escrow pursuant to these regulations and other applicable law.

I/We enclose a copy of each proposed escrow facility's procedures proposed for use, and declare that each escrow facility is in compliance with the physical and environmental conditions set forth in Section 20662 of these regulations.

		Name of Escrow	Company			
	Printed Name of Declarant					
	Signature of Declarant					
		Position of D	eclarant			
<u></u>		Escrow Compar	ny Address			
-						
	State, Zip Code					
(	)	(_)_				
	Telephone and FAX Numbers					
I have read	and understand the contents of t	his application.				
certify (or	declare) under penalty of perjur	y under the laws of the	State of Califo	ornia that the foregoing is true and correct		
Signed at		, this	day of	, 19 .		
-	(City and State)					
Signature of Declarant						
<u></u>		Position of D	eclarant			

(Form Date is: June, 1995)

Applicati	on for Approval of Escrow Facil	lity
	regarding each proposed escrow fac	cility:
Name of Escrow Company		
Name of Escrow Facility No. 1		
Contact Name at Escrow Facility		
Escrow Facility Address		
City, State, Zip Code		
Telephone and Fax Numbers	(_)	(_)
Name of Escrow Facility No. 2		
Contact Name at Escrow Facility		
Escrow Facility Address		
City, State, Zip Code		
Telephone and Fax Numbers	(_)	(_)_
Name of Escrow Facility No. 3		
Contact Name at Escrow Facility		
Escrow Facility Address		
City, State, Zip Code		
Telephone and Fax Numbers	(_)	(_)
Name of Escrow Facility No. 4		
Contact Name at Escrow Facility		
Escrow Facility Address		
City, State, Zip Code		
Telephone and Fax Numbers	(_)	()
I have read and understand the contents of this	s application.	
I certify (or declare) under penalty of perjury	under the laws of the State of California	that the foregoing is true and correct.
Signed at	, this day of	, 19 .
(City and State)		
	Signature of Declarant	

(Form Date is: June, 1995)

Position of Declarant

For Official Use Only

## Appendix B. Form of Notice of Approval. Notice of Approval \_\_\_\_\_\_, Secretary of State of the State of California, do hereby certify that: \_\_\_\_, has applied for approval of their facility, located \_ Company of \_ \_\_\_\_ for the holding of ballot tally software program source code for use in California elections. 2. The Secretary of State has reviewed the application and the applicant escrow facility's procedures proposed for use by said escrow company, as required by these regulations and other applicable law. 3. The use of the escrow facility described in paragraph 1 is in accord with these regulations and other applicable law and is hereby approved for the holding of ballot tally software program source code for use in California elections. 4. Any vendor of ballot tally software programs may use the escrow facility described in paragraph 1 for the purpose of holding ballot tally software program source code(s) for use in California elections, subject to the provisions set forth in Title 2, California Code of Regulations, Division 7, Chapter 6. 5. No changes or modifications to the escrow facility's procedures shall be made until the Secretary of State has been notified in writing and has determined that the change or modification does not impair the ability of the escrow facility to store ballot tally software program source code(s). IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California, at Sacramento, this\_\_\_\_\_\_, 19\_\_\_,

Secretary of State

NOTE: Authority cited: Section 12172.5, Government Code and Section 19103, Elections Code. Reference: Section 19103, Elections Code.

## Chapter 7. Ballot Designations

## § 20710. General Provisions.

- (a) The regulatory purpose of this Chapter is to ensure the accurate designation of the candidate upon the ballot in order that an informed electorate may intelligently elect one of the candidates.
- (b) The Secretary of State shall, at all times, apply and interpret the provisions of Elections Code § 13107 and the regulations included in this Chapter in a manner consistent with the regulatory purpose of this Chapter
- (c) Candidates are not required to use a ballot designation pursuant to Elections Code § 13107, subdivision (a), and may opt to leave the space for such a designation on the ballot blank. In order to notify the elections official as to whether he or she will use a ballot designation or will opt to leave the ballot designation space blank, the candidate must initial the appropriate box on the Declaration of Candidacy or otherwise so indicate on the Declaration of Candidacy.
- (d) Pursuant to Elections Code § 13107, subdivision (a), a candidate may submit a proposed ballot designation pursuant to any one of the four provisions specified in Elections Code § 13107, subdivision (a), subparts (1) through (4), applicable to that candidate. The candidate shall be free to select from which of the applicable four subparts he or she is submitting his or her proposed ballot designation.
- (e) The regulations set forth in this Chapter shall apply only to elections held for offices for which elections returns are certified by the Secretary of State of the State of California.
- (f) Whenever, the word "should" is used in this Chapter, it is recommended, not mandatory.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

#### History

1. New chapter 7 (sections 20710–20719) and section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

#### § 20711. Ballot Designation Worksheet.

- (a) In order to facilitate review of a candidate's proposed ballot designation by the Secretary of State pursuant to Elections Code § 13107, the candidate may submit, at the time of filing his or her proposed ballot designation on the Declaration of Candidacy, a completed Ballot Designation Worksheet on a form provided by the Secretary of State.
- (b) All Ballot Designation Worksheets filed with the Office of the Secretary of State or the county elections officials pursuant to this section shall be public records and shall be available for inspection and copying at the public counter of the Elections Division of the Office of the Secretary of State, Fifth Floor, 1500 11<sup>th</sup> Street, Sacramento, California 95814, or at the office of the applicable county elections official.
- (c) The Secretary of State shall provide a master copy or copies of the Ballot Designation Worksheet to all elections officials responsible for providing and accepting the nomination documents for candidates in elections for offices certified by the Secretary of State. The Ballot Designation Worksheet shall request that the candidate proposing the ballot designation provide the following information:
- (1) The candidate's name, home, business and mailing addresses, telephone numbers, e-mail address, if available, and fax number;
- (2) A designation of the office for which the candidate is seeking election;
- (3) The name, home, business and mailing addresses, telephone numbers, e-mail address, if available, and fax number of the attorney representing the candidate or for any other person to be contacted in the event the Secretary of State requires further information regarding the proposed ballot designation;
  - (4) The proposed ballot designation submitted by the candidate;

- (5) At the option of the candidate, the candidate may submit one or more proposed alternate ballot designations ranked in order of the candidate's preference;
- (6) A brief statement identifying the factual basis upon which the candidate claims the proposed ballot designation and each proposed alternate ballot designation, including the following:
- (A) If the candidate holds elected office and is submitting his or her proposed ballot designation pursuant to Elections Code § 13107, subdivisions (a)(1) or (a)(2), the candidate should indicate the elective office he or she currently occupies and may attach a copy of his or her Certificate of Election:
- (B) If the candidate is a judicial officer and is submitting his or her proposed ballot designation pursuant to Elections Code § 13107, subdivisions (a)(1) or (a)(2), the candidate should indicate the elective office he or she currently holds and may attach either (A) a copy of his or her Certificate of Election or (B) a copy of his or her commission or certificate of appointment, issued at the time the candidate was appointed to the judicial office which he or she currently occupies;
- (C) If the candidate submits a ballot designation pursuant to Elections Code § 13107, subdivision (a)(3), the candidate should indicate:
- (i) The title of the position or positions which he or she claims supports the proposed ballot designation;
  - (ii) The dates during which the candidate held such position;
  - (iii) A description of the work he or she performs in the position;
  - (iv) The name of the candidate's business or employer;
- (v) The name and telephone number of a person or persons who could verify such information; and
- (vi) A statement that the professions, vocations or occupations relied upon to support the proposed ballot designation constitute the primary, main or leading professions, vocations or occupations of the candidate, in accordance with the definition of the term "principal" as set forth at § 20714, subdivision (b).
- (D) If the candidate submits a ballot designation pursuant to Elections Code § 13107, subdivision (a)(4), the candidate should indicate the date on which he or she was appointed to the office for which he or she is an appointed incumbent.
- (d) The candidate may attach or append any supporting documents or other exhibits to his or her Ballot Designation Worksheet which he or she believes support his or her proposed ballot designation. Such attached documents or other exhibits shall be deemed to be incorporated by reference as part of the candidate's Ballot Designation Worksheet and shall be considered as such by the Secretary of State.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

## HISTORY

1. New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

## § 20712. Proposed Ballot Designations Submitted Pursuant to Elections Code § 13107, Subdivision (a)(1).

Proposed ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(1), shall be subject to the following provisions:

- (a) In the case of candidates holding elective city, county, district, state, or federal office, the candidate's ballot designation shall be the elective office which the candidate holds at the time of filing the nomination documents.
- (b) In the case of judicial officers, the candidate's ballot designation shall be the elective office which the candidate holds at the time of filing the nomination documents.
- (c) There shall be no word count limitation applicable to ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(1).
- (d) Proposed ballot designations indicating a position of legislative leadership, such as "Majority Leader of the California Senate," "Minority Leader of the California State Assembly," "Speaker of the California State Assembly," "President Pro Tempore of the California State Sen-

ate," and the like, are not elective offices described in Elections Code § 13107, subdivision (a)(1). Such ballot designations are improper, pursuant to Elections Code § 13107, subdivision (a)(1). They may, however, be considered under the provisions of § 13107(a)(3).

(e) Proposed ballot designations indicating that the candidate is a member of the state or county central committee of a political party, or an officer of a state or county central committee of a political party, are improper, as such positions do not constitute elective county or state offices as specified in Elections Code § 13107, subdivision (a)(1).

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107. Elections Code.

#### HISTORY

1. New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

## § 20713. Proposed Ballot Designations Submitted Pursuant to Elections Code § 13107, Subdivision (a)(2).

Proposed ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(2), shall be subject to the following provisions:

- (a) A proposed ballot designation submitted pursuant to Elections Code § 13107, subdivision (a)(2), is limited "incumbent," as that term is defined in Elections Code § 13107, subdivision (a)(2).
- (b) The term "incumbent" must be used as a noun. It shall not be used in conjunction with any other words, including any accompanying adjectives or modifiers, and must stand alone. A candidate qualified to use this designation pursuant to Elections Code § 13107, subdivision (a)(2), shall be entitled to use the ballot designation "Incumbent."
- (c) The word "incumbent" is strictly limited for use in ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(2), and may not be used as an adjective in any other ballot designation. Note: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

#### HISTORY

1. New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

## § 20714. Proposed Ballot Designations Submitted Pursuant to Elections Code § 13107, Subdivision (a)(3).

Proposed ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(3), shall be subject to the following provisions:

- (a) The terms "profession," "vocation," or "occupation," as those terms are used in Elections Code § 13107, subdivision (a)(3), are defined as follows:
- (1) "Profession" means a field of employment requiring special education or skill and requiring specific knowledge of a particular discipline of learning or science. The labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. Recognized professions generally include, but are not limited to, law, medicine, education, engineering, accountancy, and journalism. Examples of an acceptable designation of a "profession," as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, "attorney," "physician," "accountant," "architect," and "teacher."
- (2) "Vocation" means a trade, a religious calling, or the work upon which a person, in most but not all cases, relies for his or her livelihood and spends a major portion of his or her time. As defined, vocations may include, but are not limited to, religious ministry, child rearing, homemaking, elderly and dependent care, and engaging in trades such as carpentry, cabinetmaking, plumbing, and the like. Examples of an acceptable designation of a "vocation," as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, "minister," "priest," "mother," "father," "homemaker," "dependent care provider," "carpenter," "plumber," "electrician," and "cabinetmaker."
- (3) "Occupation" means the employment in which one regularly engages or follows as the means of making a livelihood. Examples of an acceptable designation of an "occupation," as defined in Elections Code

- § 13107, subdivision (a)(3), include, but are not limited to, "rancher," "restaurateur," "retail salesperson," "manual laborer," "construction worker," "computer manufacturing executive," "military pilot," "secretary," and "police officer."
- (b) "Principal," as that term is used in Elections Code § 13107, subdivision (a)(3), means a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or occupational endeavors of the candidate. The term "principal" precludes any activity which does not entail a significant involvement on the part of the candidate. Involvement which is only nominal, pro forma, or titular in character does not meet the requirements of the statute.
- (1) If a candidate is licensed by the State of California to engage in a profession, vocation or occupation, the candidate is entitled to consider it one of his or her "principal" professions, vocations or occupations if (i) the candidate has maintained his or her license current as of the date he or she filed his or nomination documents by complying with all applicable requirements of the respective licensure, including the payment of all applicable license fees and (ii) the status of the candidate's license is active at the time he or she filed his or her nomination documents.
- (2) A candidate who holds a professional, vocational or occupational license issued by the State of California may not claim such profession, vocation or occupation as one of his or her "principal" professions, vocations or occupations if (i) the candidate's licensure status is "inactive" at the time the candidate files his or her nomination document, or (ii) the candidate's license has been suspended or revoked by the agency issuing the license at the time the candidate files his or her nomination documents.
- (c) In order for a ballot designation submitted pursuant to Elections Code § 13107, subdivision (a)(3), to be deemed acceptable by the Secretary of State, it must accurately state the candidate's principal professions, vocations or occupations, as those terms are defined in subdivisions (a) and (b) herein. Each proposed principal profession, vocation or occupation submitted by the candidate must be factually accurate, descriptive of the candidate's principal profession, vocation or occupation, must be neither confusing nor misleading, and must be in full and complete compliance with Elections Code § 13107 and the regulations included in this Chapter.
- (d) If the candidate is engaged in a profession, vocation or occupation at the time he or she files his or her nomination documents, the candidate's proposed ballot designation is entitled to consist of the candidate's current principal professions, vocations and occupations. In the event the candidate does not have a current principal profession, vocation or occupation at the time he or she files his or her nomination documents, the candidate may use a ballot designation consisting of his or her principal professions, vocations or occupations, which the candidate was principally engaged in during the calendar year immediately preceding the filing of the candidate's nomination papers.
- (e) A candidate may engage in multiple principal professions, vocations or occupations. Accordingly, the candidate may designate multiple principal professions, vocations or occupations. If a candidate proposes a ballot designation including multiple principal professions, vocations or occupations, the proposed ballot designation must comply with the following provisions:
- (1) The proposed ballot designation must comply with the three-word limitation specified in Elections Code § 13107, subdivision (a)(3), and as implemented pursuant to subdivision (f) herein.
- (2) Each such proposed profession, vocation or occupation shall be separately considered by the Secretary of State and must independently qualify as a "principal" profession, vocation or occupation, as that term is defined pursuant to subdivision (b) herein.
- (3) When multiple professions, vocations or occupations are proposed as a ballot designation, they shall be separated by a slash ("/"). An example of an acceptable designation would be "Legislator/Rancher/Physician."

- (f) Pursuant to Elections Code § 13107, subdivision (a)(3), the candidate's ballot designation shall be limited to not more than three (3) words. The following rules shall govern the application of the three word limitation:
- (1) The proposed ballot designation shall be grammatically correct, generic, and all words must be spelled correctly.
- (2) Punctuation shall be limited to the use of a comma (e.g., District Attorney, Los Angeles County) and a slash (e.g., Legislator/Rancher/Physician), pursuant to subdivision (e) of this section. A hyphen may be used if, and only if, the use of a hyphen is called for in the spelling of a word as it appears in a standard reference dictionary of the English language.
- (3) All California geographical names shall be considered to be one word and shall be limited to the names of cities, counties and states. The names of special districts and political subdivisions are not "geographical names," as that term is used in Elections Code § 13107, subdivision (a)(3). If the candidate desires, the geographical name may be used in the form of "City of ...," "County of ...," or "City and County of ..." Examples of geographical names considered to be one word include Tehama County, Los Angeles County and County of Sacramento.
  - (4) An acronym shall be counted as one word.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

#### HISTORY

 New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

# § 20715. Proposed Ballot Designations Submitted Pursuant to Elections Code § 13107, Subdivision (a)(4).

- (a) Pursuant to Elections Code § 13107, subdivision (a)(4), a candidate may propose a ballot designation consisting of the phrase "appointed incumbent" if the candidate holds an office, other than a judicial office, by virtue of appointment, and the candidate is a candidate for election to the same office. The candidate may not use the unmodified word "incumbent" or any words designating the office unmodified by the word "appointed."
- (b) Pursuant to Elections Code § 13107, subdivision (a)(4), a candidate may propose a ballot designation consisting of the word "appointed" in conjunction with the elective office, if the candidate is a candidate for election to the same office or to some other office. The candidate may not use any words designating the office unmodified by the word "appointed."
- (c) There shall be no word count limitation applicable to ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(4).

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

## HISTORY

 New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

## § 20716. Unacceptable Ballot Designations.

- (a) The Secretary of State shall reject as unacceptable any proposed ballot designation which fails to comply with, or is otherwise inappropriate pursuant to, Elections Code § 13107, subdivision (a); is prohibited pursuant to Elections Code § 13107, subdivision (b); is misleading; or is otherwise improper pursuant to the regulations set forth in this Chapter.
- (b) The following types of activities are distinguished from professions, vocations and occupations and are not acceptable as ballot designations pursuant to Elections Code § 13107, subdivision (a)(3):
- (1) Avocations: An avocation is a casual or occasional activity, diversion or hobby pursued principally for enjoyment and in addition to the candidate's principal profession, vocation or occupation. Avocations may include, but are not limited to, hobbies, social activities, volunteer work, and matters pursued as an amateur.

- (2) Pro Forma Professions, Vocations and Occupations: Pro forma professions, vocations or occupations are positions held by the candidate which consume little or none of the candidate's time and which, by their nature, are voluntary or for which the candidate is not compensated. Pro forma professions, vocations and occupations may include, but are not limited to, such pursuits as honorary peace officer, volunteer firefighter, honorary chairperson, honorary professor, goodwill ambassador, official host or hostess and the like.
- (3) Statuses: A status is a state, condition, social position or legal relation of the candidate to another person, persons or the community as a whole. A status is generic in nature and generally fails to identify with any particular specificity the manner by which the candidate earns his or her livelihood or spends the substantial majority of his or her time. Examples of a status include, but are not limited to, philanthropist, activist, patriot, taxpayer, concerned citizen, husband, wife, and the like.
- (c) Pursuant to Elections Code § 13107, subdivision (b)(1), the Secretary of State shall reject as unacceptable any proposed ballot designation which would mislead voters. In making this determination, the Secretary of State shall determine whether there is a substantial likelihood that a reasonably prudent voter would be misled as to the candidate's principal profession, vocation or occupation by the candidate's proposed ballot designation. The determination shall take into account the plain meaning of the words constituting the proposed ballot designation and the factual accuracy of the proposed ballot designation based upon supporting documents or other evidence submitted by the candidate in support of the proposed ballot designation, pursuant to §§ 20711 and 20717 of this Chapter.
- (d) A ballot designation may not comprise or include commercial identification information, such as a trademark, service mark, tradename, or the specific name of a business, partnership, corporation, company, foundation, or organization. Examples of an improper use of commercial identification information include, but are not limited to, "Acme Company President," "Universal Widget<sup>®</sup> Inventor," "Director, Smith Foundation," "UCLA Professor," and the like.
- (e) Pursuant to Elections Code § 13107, subdivision (b)(2), the Secretary of State shall reject as unacceptable any proposed ballot designation which would suggest an evaluation of the candidate's qualifications, honesty, integrity, leadership abilities or character. Any laudatory or derogatory adjectives which would suggest an evaluation of the candidate's qualifications shall not be permitted. Such impermissible adjectives include, but are not limited to, "outstanding," "leading," "expert," "virtuous," "eminent," "best," "exalted," "prominent," "famous," "respected," "honored," "honest," "dishonest," "corrupt," "lazy," and the like.
- (f) Pursuant to Elections Code § 13107, subdivision (b)(3), the Secretary of State shall reject as unacceptable any proposed ballot designation which abbreviates the word "retired" or places it following any word or words which it modifies. Examples of impermissible designations include "Ret. Army General," "Major USAF, Retired" and "City Attorney, Retired."
- (g) Pursuant to Elections Code § 13107, subdivision (b)(4), the Secretary of State shall reject as unacceptable any proposed ballot designation which uses a word or prefix to indicate a prior profession, vocation, occupation or elected, appointed or judicial office previously held by the candidate. Such impermissible words or prefixes include, but are not limited to, "Ex-," "former," "past," and "erstwhile." Examples of impermissible designations include "Former Congressman," "Ex-Senator," and "Former Educator."
- (h) Subject to the provisions of Elections Code § 13107, subdivision (b)(4), use of the word "retired" in a ballot designation is generally limited for use by individuals who have permanently given up their chosen principal profession, vocation or occupation. In evaluating a proposed ballot designation including the word "retired," the Secretary of State will consider the following factors in making a determination as to the propriety of the use of the term "retired":

- (1) Prior to retiring from his or her principal profession, vocation or occupation, the candidate worked in such profession, vocation or occupation for more than 5 years;
- (2) The candidate is collecting, or eligible to collect, retirement benefits or other type of vested pension;
  - (3) The candidate has reached at least the age of 55 years;
- (4) The candidate voluntarily left his or her last professional, vocational or occupational position;
- (5) If the candidate is requesting a ballot designation that he or she is a retired public official, the candidate must have previously voluntarily retired from public office, not have been involuntarily removed from office, not have been recalled by voters, and not have surrendered the office to seek another office or failed to win reelection to the office;
- (6) The candidate has not had another more recent, intervening principal profession, vocation or occupation; and,
- (7) The candidate's retirement benefits are providing him or her with a principal source of income.
- (i) Pursuant to Elections Code § 13107, subdivision (b)(5), the Secretary of State shall reject as unacceptable any proposed ballot designation which uses the name of any political party, whether or not it has qualified for recognized ballot status.
- (j) Pursuant to Elections Code § 13107, subdivision (b)(6), the Secretary of State shall reject as unacceptable any proposed ballot designation which uses a word or words referring to a racial, religious, or ethnic group.
- (1) The Secretary of State shall reject as unacceptable any ballot designation which expressly contains or implies any ethnic or racial slurs or ethnically or racially derogatory language.
- (2) If the candidate is a member of the clergy, the candidate may not make reference to his or her specific denomination. However, the candidate may use his or her clerical title as a ballot designation (e.g., "Rabbi," "Pastor," "Minister," "Priest," "Bishop," "Deacon," "Monk," "Nun," "Imam," etc.)
- (k) Pursuant to Elections Code § 13107, subdivision (b)(6), the Secretary of State shall reject as unacceptable any proposed ballot designation which refers to any activity prohibited by law. Unlawful activity includes any activities, conduct, professions, vocations, or occupations prohibited by state or federal law.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

#### HISTORY

1. New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

#### § 20717. Requests for Supporting Documentation.

In addition to the Ballot Designation Worksheet requested to be filed with the Secretary of State pursuant to § 20711 of this Chapter, the Secretary of State may request that a candidate submit additional supporting documentation or other evidence to support the proposed ballot designation.

- (a) Time is of the essence regarding all matters pertaining to the review of proposed ballot designations submitted by candidates for public office. Failure to promptly submit requested supporting materials will preclude consideration of such materials and the rendering of a summary, final decision on the candidate's proposed ballot designation.
- (b) The Secretary of State will communicate, whenever possible, with the candidate in the most expeditious manner, including, but not limited to, telephone, facsimile transmission and electronic mail at the number or address provided by the candidate. When the candidate does not have reasonable access to a facsimile machine or electronic mail, the Secretary of State will transmit written communication to the candidate by means of overnight express delivery to the address provided by the candidate.
  - (c) The candidate shall have the burden of establishing that the pro-

posed ballot designation that he or she has submitted is accurate and complies with all provisions of Elections Code § 13107 of this Chapter.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107. Elections Code.

#### HISTORY

1. New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

## § 20718. Communication of Decisions Regarding Ballot Designations.

- (a) An official copy of the decision of the Secretary of State regarding a candidate's ballot designation will be made in writing and transmitted directly to the candidate by registered or certified mail, return receipt requested, to the address provided by the candidate. The Secretary of State shall also provide a copy to the elections official in the candidate's county of residence and to the elections official of each county within the political subdivision. Copies may also be made available to all other candidates in the race.
- (b) At the request of the candidate, the Secretary of State will transmit an unofficial copy of the decision of the Secretary of State regarding the candidate's proposed ballot designation by facsimile transmission sent to the facsimile number listed on the candidate's Ballot Designation Worksheet. When the candidate does not have reasonable access to a facsimile machine, the Secretary of State will transmit to the candidate, at the candidate's request, an unofficial copy of the decision by means of overnight express delivery to the address listed on the candidate's Ballot Designation Worksheet, the Secretary of State will transmit an official copy to the facsimile number provided by the candidate or, if the candidate does not have reasonable access to a facsimile machine, by overnight express mail to the address provided by the candidate.
- (c) All written decision of the Secretary of State regarding ballot designations are public records and are available for inspection and copying at the public counter of the Elections Division of the Office of the Secretary of State, 1500 11<sup>th</sup> Street, Fifth Floor, Sacramento, California 95814. NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

#### HISTORY

1. New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

## § 20719. Service of Legal Process Regarding Ballot Designations.

- (a) In the event a candidate or other interested party files a petition for the issuance of an extraordinary writ with the court or other legal action pertaining to a candidate's ballot designation, the summons and any other legal process should be served upon the Chief Counsel to the Secretary of State, Legal Affairs Unit, Executive Office of the Secretary, 1500 11<sup>th</sup> Street, Sixth Floor, Sacramento, California 95814. The Chief Counsel may designate a Deputy Secretary of State in the Legal Affairs Unit to accept service of process on behalf of the Secretary of State.
- (b) Telephone notice pertaining to any ex parte applications filed with the court by any candidate or other interested party should be directed to the attention of the Chief Counsel to the Secretary of State at (916) 653–7244. Counsel for all parties to such ex parte matters are admonished that waivers of the Secretary of State's right to timely notice and the right to personally appear at the ex parte hearing will be granted in writing and only in limited instances.
- (c) The Secretary of State shall provide a copy of any legal actions in subdivision (a) or (b) above to the elections official in the county of the candidate's residence and any other county in the district.

NOTE: Authority cited: Section 12172.5, Government Code. Reference: Section 13107, Elections Code.

#### **HISTORY**

1. New section filed 1–14–98; operative 1–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 3).

[The next page is 471.]

## Chapter 8. Notary Public

## § 20800. Notary Public Education and Certificate of Approval.

- (a) Prior to offering any course of study pursuant to paragraph (3) of subdivision (a) or paragraph (2) of subdivision (b) of Section 8201 of the Government Code, a vendor shall obtain a certificate of approval from the Secretary of State for each course of study offered.
- (b) To apply for a certificate of approval, a vendor shall submit to the Secretary of State for approval a completed Notary Public Education Vendor Application or Amendment, form NP40 (03/05), hereby incorporated by reference, and a lesson plan satisfying the requirements in Section 20800.1.
- (c) The Secretary of State shall issue a certificate of approval in accordance with subdivision (d) or deficiency notice in accordance with Section 20800.2 within ninety (90) business days of receipt of an application and lesson plan.
- (d) Upon approval of an application and lesson plan, the Secretary of State shall send a certificate of approval for the course of study as identified in the lesson plan to the vendor by first class mail to the address listed on the Notary Public Education Vendor Application or Amendment, form NP40 (03/05). The certificate of approval shall include the following: the name of the approved vendor as listed on the Notary Public Education Vendor Application or Amendment, form NP40 (03/05); the address listed on the Notary Public Education Vendor Application or Amendment, form NP40 (03/05); the vendor identification number issued by the Secretary of State; and the date on which the course of study was approved by the Secretary of State. A certificate of approval is non-transferable and shall not be transferred to another vendor or another course of study.
- (e) An approved vendor shall not alter or substitute the lesson plan reviewed and approved by the Secretary of State, unless such revisions are approved by the Secretary of State in accordance with Section 20800.4.
- (f) For the purposes of this chapter, an approved vendor shall be responsible for all employees, agents, instructors, contractors, and subcontractors providing an approved course of study on behalf of the approved vendor and the acts of the employees, agents, instructors, contractors, and subcontractors shall be deemed the acts of the approved vendor. NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference:

#### HISTORY

- New section filed 9-25-2000; operative 9-25-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 39).
- 2. Renumbering of former section 20800 to section 20802 and new section 20800 filed 5-3-2005; operative 5-3-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

#### § 20800.1. Lesson Plan.

Sections 8201 and 8201.2, Government Code.

- A lesson plan shall meet the following requirements:
- (a) The lesson plan shall be based on the laws of California concerning the functions and duties of a notary public.
- (b) The lesson plan shall contain a table of contents and the pages of the lesson plan shall be consecutively numbered.
- (c) The lesson plan shall be in sufficient detail to enable the Secretary of State to evaluate the specific information to be presented and to determine the accuracy of the information to be presented.
- (d) The lesson plan shall contain the procedures to establish the identity of a person attending a course of study to whom proof of completion may be issued in accordance with Section 20800.5 and ensure that the information contained in the certificate of completion pursuant to subdivision (c) of Section 20800.5 cannot be viewed by any person other than the approved vendor issuing the certificate, an employee, agent, instructor, contractor, or subcontractor of the approved vendor issuing the cer-

tificate, or the notary public applicant or notary public named in the certificate.

- (e) The lesson plan shall contain the procedures to ensure that a person attending a course of study is present for the required time.
- (f) The lesson plan shall include a schedule of the time allotted for the following:
  - (1) Lunch and break periods;
  - (2) Each major subject area;
  - (3) Each audio visual aid to be used, if any;
  - (4) Each student participation activity, if any; and
- (5) Completion, correction, and discussion of any tests used and the method of correction to be used, if any.
- (g) The lesson plan shall reflect where visual aids and student participation will be used to supplement lecture material. It shall explain the purpose of visual aids and student participation activity and describe how the instructor will generate the intended student participation. It shall include a brief synopsis of the information presented in any movie or video presentation, sufficient to enable the Secretary of State to determine what specific information is presented by the movie or video.
- (h) Copies of any handout materials, workbooks, or tests used during the course of study shall be submitted for approval as part of the lesson plan.
- (i) If the course provides for an evaluation by the students, a sample of the evaluation form shall be submitted with the lesson plan. Completion of the evaluation shall not exceed ten (10) minutes of class time. Note: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

1. New section filed 5-3-2005; operative 5-3-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

### § 20800.2. Deficient Application or Lesson Plan.

- (a) If the Secretary of State determines that a Notary Public Education Vendor Application or Amendment, form NP40 (03/05), is incomplete or a lesson plan does not satisfy the requirements of Section 8201 or 8201.2 of the Government Code or this chapter, the Secretary of State shall issue a deficiency notice containing an itemized description of the deficiencies identified. The deficiency notice shall be sent by the Secretary of State to the vendor by first class mail to the address listed on the Notary Public Education Vendor Application or Amendment, form NP40 (03/05). The Secretary of State shall use his or her discretion in determining whether or not to return the lesson plan with the deficiency notice. The decision shall be based on cost effectiveness and efficiency to the Secretary of State.
- (b) A vendor shall have thirty (30) business days from the date on which the deficiency notice was mailed by the Secretary of State to submit documentation to the Secretary of State curing the deficiencies identified in the deficiency notice.
- (c) The Secretary of State may issue more than one deficiency notice to a vendor regarding the same Notary Public Education Vendor Application or Amendment, form NP40 (03/05), and lesson plan at any time during the review process.
- (d) The Secretary of State shall disapprove a Notary Public Education Vendor Application or Amendment, form NP40 (03/05), if the deficiencies are not cured in accordance with subdivision (b).
- (e) Prior to the disapproval of an application or amendment, the vendor affected shall have the right to a hearing on the matter and the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
- (f) Upon the effective date of a decision disapproving an application or amendment, a vendor may cure the deficiencies identified in the decision and submit a Notary Public Education Vendor Application or Amendment, form NP40 (03/05), in accordance with Section 20800. NOTE: Authority cited: Sections 8201.2, 8220 and 11415.10, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

## § 20800.3. Notification of Changes of Approved Vendor Information.

Within thirty (30) business days of any changes in the information contained in the application approved by the Secretary of State or most current amendment submitted to the Secretary of State, an approved vendor shall submit to the Secretary of State a Notary Public Education Vendor Application or Amendment, form NP40 (03/05), identifying the changes. It shall be the responsibility of an approved vendor to confirm receipt by the Secretary of State.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

#### § 20800.4. Lesson Plan Revisions.

- (a) An approved vendor shall revise an approved lesson plan as necessary to ensure that the information provided in an approved course of study reflects current California law concerning the duties and functions of a notary public.
- (b) Any proposed revisions to an approved lesson plan shall be approved by the Secretary of State prior to implementing the proposed revisions in an approved course of study.
- (c) To apply for a certificate of approval for a revised lesson plan, an approved vendor shall submit a completed Notary Public Education Vendor Application or Amendment, form NP40 (03/05), and a revised lesson plan in accordance with Section 20800.
- (d) The provisions in Sections 20800, 20800.1, and 20800.2 shall apply to a revised lesson plan.
- (e) Upon approval of a revised lesson plan, the Secretary of State shall issue a certificate of approval for the course of study as identified in the revised lesson plan. The certificate of approval shall include the following: the name of the approved vendor as listed on the most current Notary Public Education Vendor Application or Amendment, form NP40 (03/05); the address on file with the Secretary of State as listed on the most current Notary Public Education Vendor Application or Amendment, form NP40 (03/05); the vendor identification number issued by the Secretary of State; and the date on which the revised lesson plan was approved by the Secretary of State. A certificate of approval for a revised lesson plan is non–transferable and shall not be transferred to another vendor or another course of study.
- (f) As of the approval date of the revised lesson plan as indicated in the certificate of approval, an approved vendor shall only utilize the revised lesson plan in an approved course of study.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

### HISTORY

1. New section filed 5-3-2005; operative 5-3-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

#### § 20800.5. Proof of Completion.

- (a) An approved vendor shall issue proof of completion to a notary public applicant or notary public upon completion of an approved course of study, as provided in subdivision (c).
- (b) An approved vendor shall ensure that only a person who has completed an approved course of study receives proof of completion, as provided in subdivision (c). If a notary public applicant or notary public fails to be present during any portion of an approved course of study, the approved vendor shall not issue a proof of completion to the notary public applicant or notary public, and the notary public applicant or notary public shall not receive credit for the time in which he or she was present.
- (c) Proof of completion shall consist of a certificate signed by an approved vendor or an employee, agent, instructor, contractor, or subcontractor of an approved vendor, which contains the following information:

- (1) The name of the approved vendor as it appears on the certificate of approval issued by the Secretary of State for the approved course of study
- (2) The name of the notary public applicant or notary public who completed the approved course of study.
- (3) The type of photograph identification, identification number, expiration date, and state or country of issuance of the documentation establishing the identity of the notary public applicant or notary public who attended and completed the approved course of study.
- (4) The date the notary public applicant or notary public completed the approved course of study.
- (5) Whether the proof of completion is for a three–hour or six–hour course of study.
- (6) The following statements: (A) proof of completion shall be valid for a period of two (2) years from the date of issuance; and (B) proof of completion must be attached to the notary public application when submitted to the Secretary of State.
- (d) Proof of completion of an approved course of study shall be valid for a period of two (2) years from the date of issuance. If proof of completion is submitted to the Secretary of State more than two (2) years after the proof of completion was issued, the Secretary of State shall notify the notary public applicant or notary public that the proof of completion is not valid and instruct the notary public applicant or notary public to complete an approved course of study and submit a valid, current proof of completion to the Secretary of State.
- (e) Proof of completion submitted to the Secretary of State with a notary public application shall not be returned to the notary public applicant or notary public.
- (f) If a notary public application is submitted without proof of completion or proof of completion is submitted without a notary public application, the Secretary of State shall return it to the notary public applicant or notary public with notification of the deficiency.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### History

1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

#### § 20800.6. List of Attendees.

- (a) An approved vendor shall maintain and secure a list of persons who attend each session of an approved course of study for a period of two (2) years from the date of issuance of proof of completion for the session in which a list refers. The list shall include the following:
- (1) The name of the approved vendor as listed in the certificate of approval for the approved course of study;
  - (2) The vendor identification number issued by the Secretary of State;
- (3) The name of the instructor or instructors who taught the approved course of study;
  - (4) The date, time, and location of the approved course of study;
- (5) The names of all the attendees in alphabetical order by the last name of the attendee and whether or not proof of completion was issued to each attendee; and
- (6) The type of photograph identification, identification number, expiration date, and state or country of issuance of the documentation establishing the identity of the notary public applicant or notary public who attended and completed the approved course of study.
- (b) An approved vendor shall not collect the social security numbers of any attendees.
- (c) "Secure" as used in this section means that an approved vendor, former approved vendor, or employee, agent, instructor, contractor, or subcontractor of an approved vendor or former approved vendor shall not copy or release any list of attendees or any information contained therein to any person, except the Secretary of State, district attorney, city attorney, or Attorney General.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

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1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

## § 20800.7. Secretary of State Attending Approved Course of Study.

An approved vendor shall permit the Secretary of State or representatives of the Secretary of State to attend any approved course of study without prior notice at no charge for the purpose of observation, monitoring, auditing, or investigating. Upon arrival at an approved course of study, the Secretary of State or representatives of the Secretary of State shall provide an approved vendor with a letter identifying the individual(s) attending the course pursuant to this section signed by the Secretary of State or a representative of the Secretary of State.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

 New section filed 5-3-2005; operative 5-3-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

## § 20800.8. Duty to Respond to a Written Request from the Secretary of State.

It shall be the duty of an approved vendor to respond in writing within thirty (30) business days of receiving a written request from the Secretary of State for any information relating to a course of study offered by the approved vendor. The Secretary of State shall send a written request to the address, facsimile number, or email address listed on the most current Notary Public Education Vendor Application or Amendment, form NP40 (03/05), filed pursuant to Section 20800 or 20800.3.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

 New section filed 5-3-2005; operative 5-3-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

## § 20800.9. Cancellation or Delay of Scheduled Approved Course of Study.

- (a) Prior to charging any fees to a notary public applicant or notary public for an approved course of study, an approved vendor shall disclose the refund policy of the approved vendor.
- (b) An approved vendor shall refund all fees within thirty (30) business days of a scheduled course date to any notary public applicant or notary public who registered to attend an approved course of study if one of the following occurs: (1) an instructor fails to appear at the scheduled time, date, and place of the approved course of study; or (2) an approved course of study is delayed in starting more than fifteen minutes (15) after the scheduled time, a notary public applicant or notary public immediately informs the approved vendor of his or her request for a refund, and leaves the approved course of study prior to it starting.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

## § 20801. List of Approved Vendors.

- (a) The list compiled in accordance with subdivision (c) of Section 8201.2 of the Government Code shall list approved vendors in alphabetical order according to the name of each vendor as listed on the most current Notary Public Education Vendor Application or Amendment, for NP40 (03/05), submitted to the Secretary of State.
- (b) The Secretary of State may include the following information on the list of approved vendors for each approved vendor: the name of approved vendor in accordance with subdivision (a); a mailing address; a maximum of two (2) telephone numbers; a facsimile number; an email address; and a website address.
- (c) The Secretary of State shall only update the list of approved vendors to add, delete, or amend approved vendor information, which is filed in accordance with Section 20800.3. An updated list of approved vendors shall be available by the first (1st) day of each month following the month

during which there were additions, deletions, or amendments to the list of approved vendors. A certificate of approval must be issued by the Secretary of State or an amendment must be submitted to the Secretary of State by the fifteenth (15th) day of the preceding month to be reflected in the updated list of approved vendors available by the first (1st) day of the following month. If a certificate of approval is issued by the Secretary of State or an amendment submitted to the Secretary of State after the fifteenth (15th) day of a month, then the additions, deletions, or amendments shall be reflected in the updated list of approved vendors available by the first (1st) day of the second (2nd) month following the month in which the certificate of approval was issued by the Secretary of State or an amendment was submitted to the Secretary of State.

- (d) The Secretary of State may also make a list of approved vendors available online at www.ss.ca.gov. The online list of approved vendors shall be in random order and searchable by the county or counties in which approved vendors provide approved courses of study. The online list shall be updated in accordance with subdivision (c).
- (e) The Secretary of State reserves the right to delete any information from the list compiled pursuant to subdivision (c) of Section 8201.2 of the Government Code or subdivision (d) of this section that the Secretary of State determines may be misleading to the public or of an inappropriate nature.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

- 1. New section filed 9–25–2000; operative 9–25–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 39).
- 2. Renumbering of former section 20801 to section 20803 and new section 20801 filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

## § 20801.1. Grounds for Termination of a Certificate of Approval

- (a) The Secretary of State may terminate a certificate of approval upon any of the following grounds:
- (1) Violation of any of the provisions of this chapter or Sections 8201 or 8201.2 of the Government Code.
- (2) Misrepresentation of the laws of California concerning the duties and functions of a notary public.
- (3) Deviation from the lesson plan for a course of study approved by the Secretary of State.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

### § 20801.2. Termination of Certificate of Approval.

- (a) Prior to the termination of a certificate of approval, the approved vendor affected shall have a right to a hearing on the matter and the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
- (b) If the Secretary of State determines, after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, that any approved vendor has committed or omitted acts constituting grounds for termination of the approved vendor's certificate of approval, the cancellation of the approved vendor's certificate of approval in accordance with Section 20801.3 shall not bar the Secretary of State from instituting or continuing an investigation or disciplinary proceedings. Upon completion of the disciplinary proceedings, the Secretary of State shall enter an order finding the facts and stating the conclusion that the fact would or would not have constituted grounds for termination of the certificate of approval if the certificate of approval had still been in effect.

NOTE: Authority cited: Sections 8201.2, 8220 and 11415.10, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

### § 20801.3. Cancellation of Certificate of Approval.

- (a) An approved vendor may cancel its certificate of approval by submitting a written notice of cancellation to the Secretary of State. Unless otherwise stated in the notice of cancellation, the effective date of the cancellation of the certificate of approval shall be thirty (30) business days after receipt of the notice of cancellation. It shall be the responsibility of a vendor to confirm receipt by the Secretary of State.
- (b) Within thirty (30) business days of the effective date of a cancellation of a certificate of approval, a vendor shall refund all fees to all individuals who paid to take an approved course from a vendor if the course is scheduled after the effective date of the cancellation.

NOTE: Authority cited: Sections 8201.2 and 8220, Government Code. Reference: Sections 8201 and 8201.2, Government Code.

#### HISTORY

1. New section filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

#### § 20802. Notary Public Fees.

- (a) The Secretary of State shall charge a twenty dollar (\$20) processing fee for notary public applications to cover the costs of administering the program. The processing fee is nonrefundable.
- (b) Upon written request, a notary public may obtain a duplicate commission certificate from the Secretary of State for a fee of ten dollars (\$10) per certificate.

NOTE: Authority cited: Sections 8220 and 12182.1, Government Code. Reference: Sections 8201(c) and 8207.3, Government Code.

#### HISTORY

- 1. New chapter 8 (section 20802) and section filed 6–1–98; operative 6–1–98 pursuant to Government Code section 11343.4(d) (Register 98. No. 23).
- 2. Amendment filed 3-1-2001; operative 3-31-2001 (Register 2001, No. 9).
- 3. Renumbering of former section 20802 to section 20804 and renumbering of former section 20800 to section 20802 filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

#### § 20803. Notary Public Examination.

The written examination prescribed by the Secretary of State to determine the fitness of an applicant to exercise the functions of the office of notary public shall be a proctored examination administered by the Secretary of State or an agent of the Secretary of State. The Secretary of State or an agent of the Secretary of State shall charge a twenty dollar (\$20) examination fee which shall be payable at the examination site. The examination fee is nonrefundable. The examination results shall be valid for a period of one (1) year from the date of the examination.

NOTE: Authority cited: Sections 8220 and 12182.1, Government Code. Reference: Section 8201(c), Government Code.

#### HISTORY

1. Renumbering of former section 20801 to new section 20803 filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

### § 20804. Notary Public Disciplinary Guidelines.

- (a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Secretary of State shall consider the disciplinary guidelines entitled "Notary Public Disciplinary Guidelines 2001" which are hereby incorporated by reference. Deviation from the "Notary Public Disciplinary Guidelines 2001" and orders is appropriate where the Secretary of State in his or her sole discretion determines that the facts of the particular case warrant such deviation (e.g., nature and severity of the act, the presence of mitigating factors or evidentiary problems).
- (b) The publication entitled "Notary Public Disciplinary Guidelines 2001" is available on the internet at www.ss.ca.gov or contact the Secretary of State, Notary Public Section, Attention: Publications, 1500 11th Street, Sacramento, California 95814.

NOTE: Authority cited: Sections 8220 and 11400.20, Government Code. Reference: Sections 11400.20 and 11425.50(e), Government Code.

#### HISTORY

1. Renumbering of former section 20802 to new section 20804, including amendment of section heading, filed 5–3–2005; operative 5–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 18).

## Chapter 9. Business Programs

## § 21900. Fees for Filing Bonds.

(a) The fee for filing a bond shall be \$30.00.

NOTE: Authority cited: Sections 22391.1 and 22443.1, Business and Professions Code; and Sections 1789.26, 1812.69, 1812.129, 1812.503, 1812.510, 1812.515, 1812.525 and 1812.600, Civil Code. Reference: Sections 22391.1 and 22443.1, Business and Professions Code; and Sections 1789.26, 1812.69, 1812.129, 1812.510, 1812.515, 1812.525 and 1812.600, Civil Code.

#### HISTORY

- 1. Repealer and new chapter 9 heading and new section filed 10–31–97; operative 10–31–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 44). For prior history see Register 85, No. 26.
- 2. Repealer of subsection (b) filed 3–4–99; operative 4–3–99 (Register 99, No. 10).

#### § 21902. Requirements for Bonds.

The term for all bonds shall not be less than twenty-four (24) months. NOTE: Authority cited: Sections 22391.1 and 22443.1, Business and Professions Code; and Sections 1789.26, 1812.69, 1812.129, 1812.503, 1812.510, 1812.515, 1812.525 and 1812.600, Civil Code. Reference: Sections 22391.1 and 22443.1, Business and Professions Code; and Sections 1789.26, 1812.69, 1812.129, 1812.503, 1812.510, 1812.515, 1812.525 and 1812.600, Civil Code.

#### HISTORY

- 1. New section filed 10–31–97; operative 10–31–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 44). For prior history see Register 85, No. 26.
- 2. Amendment of section heading, repealer of subsection (a) designator and amendment of resulting paragraph, and repealer of subsection (b) filed 3–4–99; operative 4–3–99 (Register 99, No. 10).

### § 21903. Special Handling Fees.

- (a) Special Handling Services: Any Customer may submit one or more service requests or documents for processing with special handling service. Unless otherwise specified in this Section, special handling services apply only to service requests or documents submitted in person at the Secretary of State's Sacramento public counter, provided however, at the discretion of the Secretary of State, some special handling services may be made available at Secretary of State regional office public counters.
- (b) Special handling service includes, but is not limited to, the following activities:
- (1) the review, filing and the preparation of certified copies of a document submitted for filing in priority to documents submitted by mail or without a special handling request;
- (2) responses to requests for certificates, certified copies of documents filed, and uncertified copies of documents filed in priority to requests submitted by mail or without a special handling request;
- (3) written or in-person requests concerning the status or name-availability of a corporation or other business entity;
- (4) except when prohibited by statute, relay of status or name availability information through the Secretary of State's telephone service.
- (c) Fees for special handling shall be \$15 per document unless denoted below and shall be charged for the special handling of documents when they are submitted for filing, whether they are filed or rejected:
- (1) Merger filing \$15 per transaction, regardless of the number of constituent corporations or other business entities;
- (2) Requests for certificates and for a certified or uncertified copy of a document for corporations or other business entities \$10 per entity;
  - (3) Name reservations \$10 per certificate;
- (4) Notaries public certificates and certified and uncertified copy requests \$6 per document;
  - (5) UCC lien filings, certificates and copy requests \$6 per document;
- (6) Trademark/service mark certified and uncertified copy requests \$6 per mark;
- (7) Certificates of official character (authentication of a public official's signature) and certificates of incumbency \$6 per certificate;
- (8) Facsimile transmission of information or copied documents \$5 per business entity which is transmitted domestically, and \$10 per business entity transmitted internationally;
- (9) Phone, mail or counter status requests concerning corporations and other business entities \$4 per request;

- (10) Name availability requests over the phone \$4 per name.
- (11) Fees for copying records shall be \$1.00 for the first page and \$.50 for each page thereafter.
- (d) If a special handling fee is charged with respect to the filing of documents or the authentication of a public official's signature, a separate special handling fee shall not be charged for concurrent special handling for certificates, or certified or uncertified copies as to the same debtor, corporation or other business entity, or for additional simultaneously submitted authentication requests for the same public official.
- (e) There shall be no special handling fee for the filing of annual statements and annual certificates by corporations or limited liability companies, or for any filing which is exempt pursuant to Government Code section 6103.
- (f) "Customer" is a customer of the Secretary of State and includes, but is not limited to, a principal, agent, messenger or attorney.
- (g) "Other business entity" includes, but is not limited to, general partnership, limited partnership, limited liability partnership, limited liability limited partnership (foreign only), limited liability company, business trust, real estate investment trust or an unincorporated association.

NOTE: Authority cited: Section 12182, Government Code. Reference: Section 12182, Government Code.

#### HISTORY

- 1. Renumbering of former section 21904 to new section 21903, including amendment of Note, filed 8-29-2000; operative 9-28-2000 (Register 2000, No. 35).
- 2. Amendment filed 8-8-2008; operative 9-7-2008 (Register 2008, No. 32).

### § 21904. Preclearance of Documents.

(a) Definitions.

As used in this section, the following words shall have the following definitions.

- (1) "Business day" is a day Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding state holidays in which the Secretary of State is closed for business.
- (2) "Customer" is a customer of the Secretary of State and includes, but is not limited to, a principal, agent, messenger or attorney.
- (3) "Eligible document" is a document submitted to the Secretary of State pursuant to the California Corporations Code, the California Financial Code, or the California Insurance Code.
- (4) "Filing response" is a written response prepared by the Secretary of State when documents submitted for filing are returned without filing due to the fact that the document is found not to conform to the law.
- (5) "Preclearance" is a determination by the Secretary of State, made in writing, that an eligible document submitted for review prior to an intended filing date, conforms to law within the meaning of the applicable sections of the code under which it is intended to be filed, and will be filed when the eligible document is submitted for filing, if the requirements set forth in paragraph (2) of subdivision (d) are satisfied and the Secretary of State is able to make the determinations set forth in paragraph (3) of subdivision (d).
- (6) "Precleared document" is a document that has received a preclearance from the Secretary of State pursuant to section 21904 of these regulations.
- (7) "Preclearance response" is a written response prepared by the Secretary of State to a request for preclearance.
- (8) "Preclearance version" is the form of an eligible document that is submitted to the Secretary of State for preclearance.
- (b) The Secretary of State in providing preclearance services for a fee established pursuant to this section, if such services do not cause disruption or delay in the process of normal handling of documents, may suspend all or any portion of the preclearance services, as set forth in this section, when deemed necessary due to a high volume of workload, staff shortages or equipment malfunction. Notice of the suspension of all or any portion of the preclearance services shall be communicated to the public in a reasonable manner. Suspension of all or any portion of the preclearance services may be for a specified or indefinite period of time, as denoted in the notice.

- (c) Documents submitted for preclearance shall occur as described in this subdivision.
- (1) To submit an eligible document for preclearance a customer shall personally deliver to the Sacramento office of the Secretary of State the following:
- (A) One copy of the eligible document in the form for which preclearance is sought;
- (B) Requisite preclearance fee, as provided in paragraph (8) of subdivision (c);
- (C) Statement as to the class of service requested, as provided in paragraph (7) of subdivision (c);
- (D) Statement as to the preferred means of delivery of the preclearance response, as provided in paragraph (9) of subdivision (c); and
- (E) Name and telephone number of the customer to whom questions, if any, regarding the document or service requested may be directed.
- (2) An eligible document submitted to the Secretary of State for preclearance shall contain the name of the entity. An eligible document may be submitted to the Secretary of State for preclearance with designated blank spaces for information that does not affect the determination of the Secretary of State as to whether the eligible document will conform to law when it is properly completed, signed and, if required, acknowledged or verified. Such information may include, but is not limited to, names of executing officers, required signatures, and dollar amounts.
- (3) After receipt of an eligible document for preclearance, the Secretary of State shall issue a preclearance response within the time period for the requested class of service, as provided in paragraph (7) of subdivision (c). The Secretary of State shall deliver the preclearance response by the requested means of delivery, as provided in paragraph (9) of subdivision (c). The Secretary of State shall not be responsible for ensuring that the preclearance response is delivered within the time period for the requested class of service, as delivery may take additional time to reach a customer due to the means of delivery or the fact that the customer is not available to receive it.
- (4) When preclearance of an eligible document is denied, the Secretary of State shall state in the preclearance response the reason or reasons for the denial of preclearance.
- (5) If it appears to the Secretary of State that a preclearance response cannot be issued within the time period for the requested class of service, the Secretary of State shall contact the customer concerning the appropriate action to be taken, and refund the preclearance fee, if the customer requests return of an eligible document without a preclearance response.
- (6) A customer may resubmit a revised version of an eligible document that was previously submitted for preclearance, in accordance with the procedures set forth above, one or more times, provided that the applicable fee accompanies each submission. To assist the Secretary of State in reviewing the eligible document, a customer shall submit the preclearance response with the revised version of the eligible document.
- (7) The classes of preclearance service for an eligible document submitted pursuant to subsection (C) of paragraph (1) of subdivision (c) are the following:
- (A) Class I service: a preclearance response shall be issued within twenty-four (24) hours of receipt by the Secretary of State of an eligible document, excluding weekends and state holidays in which the Secretary of State is closed for business;
- (B) Class II service: a preclearance response shall be issued within seventy-two (72) hours of receipt by the Secretary of State of an eligible document, excluding weekends and state holidays in which the Secretary of State is closed for business;
- (C) Class III service: a preclearance response shall be issued within five (5) business days of receipt by the Secretary of State of an eligible document; and
- (D) Class IV service: a preclearance response shall be issued within ten (10) business days of receipt by the Secretary of State of an eligible document.

- (8) The preclearance fees shall be the following: (A) \$500 for Class I service; (B) \$400 for Class II service; (C) \$300 for Class III service; and (D) \$250 for Class IV service.
- (9) Delivery of a preclearance response pursuant to subsection (D) of paragraph (1) of subdivision (c) shall be by one of the following means:
- (A) The preclearance response shall be available at the Sacramento office of the Secretary of State for the customer to collect in person;
- (B) The preclearance response shall be transmitted by telephone facsimile, if a telephone facsimile number provided by the customer accompanies the preclearance request;
- (C) The preclearance response shall be transmitted by electronic mail, if an electronic mail address provided by the customer accompanies the preclearance request;
- (D) The preclearance response shall be placed in the mail to be delivered by overnight courier, if a prepaid, pre–addressed overnight courier envelope provided by the customer accompanies the request for preclearance; or
- (E) The preclearance response shall be placed in the mail to be delivered by the United States Postal Service first class mail.
- (d) Precleared documents shall be filed as described in this subdivision.
- (1) A precleared document may be submitted to the Secretary of State for filing through the normal filing process, special handling provisions provided for in section 21903 of these regulations or expedited filing provisions provided for in section 21905 of these regulations.
- (2) To submit a precleared document for filing with the Secretary of State, a customer shall submit the following:
  - (A) Completed document, containing the required signatures;
  - (B) Two copies of the document;
  - (C) Copy of the preclearance response;
  - (D) Requisite filing fee; and
  - (E) Requisite special handling fee or expedited filing fee, if applicable.
- (3) The review of a document that has received a preclearance shall generally be limited to the following determinations:
- (A) Whether any changes have been made to the document since the preclearance was issued;
- (B) Whether all designated blank spaces, if any, in the preclearance version have been completed and, if not, whether the failure to complete such information causes the document not to conform to law; and
- (C) Whether the eligible document has been signed and, to the extent required by law, verified or acknowledged, in accordance with the applicable provisions related to its execution.
- (4) If the Secretary of State determines that a precleared document submitted for filing does not conform to law, the filing response shall state the reason or reasons for the return of the document.

NOTE: Authority cited: Section 12182, Government Code; Budget Act, ch. 47, Stat. of 2006; and Section 17.1, Corporations Code. Reference: Section 12182, Government Code; and Section 17.1, Corporations Code.

#### HISTORY

- 1. Amendment of subsection (e) filed 12–23–80; effective thirtieth day thereafter (Register 80, No. 52).
- 2. Amendment filed 2–15–85; effective thirtieth day thereafter (Register 85, No. 7).
- 3. Amendment filed 9–14–89; operative 1–1–90 (Register 89, No. 37).
- 4. Adoption of subsections (b)(5)–(7) and amendment of subsections (c) and (d) filed 10–31–91 as emergency; operative 12–1–91 (Register 92, No. 7). A Certificate of Compliance must be transmitted to OAL 3–30–92 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 10-31-91 order including editorial correction of subsection (b)(7) transmitted to OAL 2-11-92 and filed 3-24-92 (Register 92, No. 15).
- 6. Repealer and new section filed 10–31–97; operative 10–31–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 44).
- 7. Renumbering of former section 21904 to section 21903 and new section 21904 filed 8–29–2000; operative 9–28–2000 (Register 2000, No. 35).
- 8. Amendment of subsections (a)(3), (a)(5)–(6), (c)(1)(A), (c)(2) and (d)(2)(A) and amendment of Note filed 9–7–2006; operative 9–7–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 36).

#### § 21905. Expedited Filing of Documents.

- (a) The definitions provided in subdivision (a) of Section 21904 shall apply to this section.
- (b) The Secretary of State in providing expedited filing services for a fee established pursuant to this section, if such services do not cause disruption or delay in the process of normal handling of documents, may suspend all or any portion of the expedited filing services, as set forth in this section, when deemed necessary due to a high volume of workload, staff shortages or equipment malfunction. Notice of the suspension of all or any portion of the expedited filing services shall be communicated to the public in a reasonable manner. Suspension of all or any portion of the expedited filing services may be for a specified or indefinite period of time, as denoted in the notice.
- (c) The expedited filing of eligible documents shall occur as described in this subdivision:
- (1) To submit an eligible document for expedited filing a customer shall personally deliver to the Sacramento office of the Secretary of State the following:
  - (A) Eligible document, including the required signatures;
  - (B) Two copies of the eligible document;
  - (C) Requisite filing fee;
  - (D) Written request for expedited filing;
- (E) Statement as to the class of service requested, as provided in subdivision (e);
- (F) Statement as to the means of delivery of the filing confirmation or the filing response, as provided in subdivision (i);
- (G) Name and telephone number of the customer to whom questions, if any, regarding the document or service may be directed; and
  - (H) Requisite expedited filing fee, as provided in subsection (f).
- (2) After receipt of an eligible document for expedited filing, as provided in paragraph (1) of subdivision (c), the Secretary of State shall provide one of the following responses within the time period for the requested class of service, as provided in subdivision (e) below.
- (A) If the document is determined to conform to law, the Secretary of State shall file the document and deliver the filing confirmation by the requested means of delivery, as provided in subdivision (i) below. The Secretary of State shall not be responsible for ensuring that the confirmation of filing is received within the time period for the requested class of service, as receipt may take additional time to reach a customer due to the means of delivery or the fact that the customer is not available to receive it
- (B) If the Secretary of State determines that an eligible document does not conform to law, the Secretary of State shall return the document and state in a filing response the reason or reasons for returning the document. Such delivery may take additional time to the extent that the customer is not available to receive it.
- (C) If it appears to the Secretary of State that an eligible document cannot be filed or a filing response cannot be issued within the time period for the requested class of service, the Secretary of State shall contact the customer concerning the appropriate action to be taken. The expedited filing fee shall be refunded if a customer requests the document to be returned without filing.
- (d) If a request for expedited filing pursuant to this section is not made in writing or the applicable fee is not paid prior to or concurrently with the submission for filing, the Secretary of State shall handle the filing of the document under the normal processing procedures.
- (e) The classes of expedited service for an eligible document submitted pursuant to paragraph (1) of subdivision (c) are the following:
- (1) Class A service: an eligible document shall be filed or a filing response issued within four (4) hours of receipt by the Secretary of State, excluding weekends and state holidays in which the Secretary of State is closed for business, if the following conditions are satisfied: (A) the eligible document was precleared; and (B) the Secretary of State determines that the information completing the designated blank spaces in the preclearance version, if any, does not require additional time to review; or

- (2) Class B service: an eligible document shall be filed or a filing response issued by 4:00 p.m. the same business day of receipt by the Secretary of State, if the eligible document was received by the Secretary of State by 9:30 a.m. that same business day; or
- (3) Class C service: an eligible document shall be filed or a filing response issued within twenty–four (24) hours of receipt by the Secretary of State, excluding weekends and state holidays in which the Secretary of State is closed for business.
- (f) The expedited filing fees shall be the following: (1) \$500 for Class A service; (2) \$750 for Class B service; and (3) \$350 for Class C service.
- (g) The expedited filing fees provided for in subdivision (f) above shall be in addition to the requisite fees for filing the document.
- (h) If an eligible document is submitted for expedited filing pursuant to this section and the Secretary of State determines that the eligible document does not conform to law, the expedited filing fee shall not be refunded.
- (i) Delivery of filing confirmation or filing response requested pursuant to subsection (F) of paragraph (1) of subdivision (c) shall be by one of the following means:
- (A) The filing confirmation or filing response shall be available at the Sacramento office of the Secretary of State for the customer to collect in person;
- (B) The filing confirmation or filing response shall be transmitted by telephone facsimile, if a telephone facsimile number provided by the customer accompanies the expedited filing request;
- (C) The filing confirmation or filing response shall be transmitted by electronic mail, if an electronic mail address provided by the customer accompanies the expedited filing request;
- (D) The filing confirmation or filing response shall be placed in the mail to be delivered by overnight courier, if a prepaid, pre-addressed overnight courier envelope provided by the customer accompanies the request for preclearance; or
- (E) The filing confirmation or filing response shall be placed in the mail to be delivered by the United States Postal Service first class mail. NOTE: Authority cited: Section 12182, Government Code; Budget Act, ch. 47, Stat. of 2006; and Section 17.1, Corporations Code. Reference: Section 12182, Government Code; and Section 17.1, Corporations Code.

- 1. New section filed 8-29-2000; operative 9-28-2000 (Register 2000, No. 35).
- Amendment of subsection (c)(1)(A) and amendment of Note filed 9-7-2006; operative 9-7-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 36).
- 3. Amendment filed 8-8-2008; operative 9-7-2008 (Register 2008, No. 32).

#### § 21905.5. Request for Specific Filing Date.

- (a) The definitions provided in Sections 21903 and 21904 shall apply to this section.
- (b) If an eligible document is returned without being filed for reasons specified in a filing response, the eligible document may be resubmitted for filing and may receive a file date of the original submission date, provided all of the following conditions are met:
- (1) the Customer specifically requested the original date of submission as a file date when initially submitting the document;

- (2) the document is resubmitted for filing by the end of the third business day following the date of the first filing response;
  - (3) the document complies with law upon resubmission.
- (c) If an eligible document is resubmitted more than once, the document will receive the earliest file date available under subdivision (b), treating each resubmission as an original submission.
- (d) A requested file date cannot precede the date of execution of a document submitted for filing.

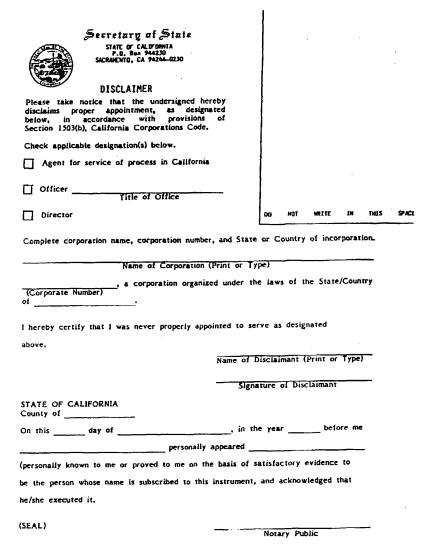
NOTE: Authority cited: Sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062, Corporations Code. Reference: Sections 110(a), 5008(a), 12214(a), 15620(a), 15628, 15902.06 and 17062, Corporations Code.

#### HISTORY

1. New section filed 8-8-2008; operative 9-7-2008 (Register 2008, No. 32).

## § 21906. Disclaimer of Proper Appointment As Agent, Officer or Director.

- (a) The disclaimer of proper appointment as agent for service of process, officer or director of a corporation provided for in Sections 1503(b), 6211(b), 8211(b), 9660 and 12571(b) of the Corporations Code shall be accomplished by filing a Secretary of State form entitled "Disclaimer." The person completing the disclaimer form shall certify that he or she was never properly appointed as agent for service of process, officer or director of a certain, named corporation. The disclaimant shall also provide the typed or written name of the disclaimant, the California Secretary of State corporation number of the named corporation and the State or Country of incorporation. The form shall be signed and acknowledged by the disclaimant or, if the disclaimant is a corporation, by a representative of the disclaimant. A person shall be considered to have been "never properly appointed" only in situations where he or she never agreed to serve prior to his or her appointment, and never specifically accepted appointment or acted as if he or she had accepted appointment as agent for service of process, officer or director subsequent to such appointment. The form shall not be used in cases where a person who has served as agent for service of process, officer or director of a corporation has resigned or been removed from office for any reason.
- (b) When a disclaimer form has been submitted in accordance with the provisions of these regulations, it shall be filed by the Secretary of State. The Secretary of State shall not be required to verify that the person making the disclaimer was ever actually named in an official filing as an agent for service of process, officer or director of the corporation specified. In cases where the person filing a disclaimer form is disclaiming proper appointment as agent for service of process and that person is shown on the Secretary of State's records as the current agent for service of process for the corporation specified on the disclaimer form, the filing of the disclaimer form shall effect a resignation of the person as such agent within the meaning of Sections 1503, 6211, 8211, 9660 and 12571 of the Corporations Code, and the Secretary of State shall give written notice of the resignation by mail to the corporation affected at its principal executive office.
- (c) The fees for copies and certified copies of disclaimer forms which have been filed with the Secretary of State shall be those set forth in Government Code Sections 12183 and 12178.1, respectively.



NOTE: Authority cited: Sections 1503, 6211, 8211, 9660 and 12571, Corporations Code. Reference: Sections 1503, 6211, 8211, 9660 and 12571, Corporations Code; Sections 12183 and 12178.1, Government Code.

### HISTORY

- 1. New section filed 2-23-89; operative 3-25-89 (Register 89, No. 9).
- Change without regulatory effect amending section and Note filed 12–22–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 51).

## § 21908. Fee for Filing Notice of Joint Powers Agreement.

The fee of the Secretary of State for the filing of a notice of a joint powers agreement or amendment thereto pursuant to Sections 6503.5 and 6503.7 of the Government Code is fixed at \$5.00.

## § 21910. Fee for Filing Merger of Limited Partnerships.

The fee of the Secretary of State for the filing of a certificate of merger pursuant to Corporations Code section 15678.4 is \$70.00 per certificate, regardless of the number of constituent limited partnerships.

NOTE: Authority cited: Section 12214, Government Code. Reference: Sections 15678.1 through 15678.9, Corporations Code.

### HISTORY

1. New section filed 2-26-91; operative 3-24-91 (Register 91, No. 13).

## § 21912. Notary Public Commission and Application Fees.

NOTE: Authority cited: Sections 8220 and 12197.1, Government Code. Reference: Sections 8201(c) and 12197.1, Government Code.

#### **HISTORY**

- 1. Amendment filed 1-22-91; operative 1-22-91 (Register 91, No. 10).
- Repealer filed 9–25–2000; operative 9–25–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 39).

## § 21914. Notary Public Examination.

NOTE: Authority cited: Section 8220, Government Code. Reference: Sections 8201 and 8211, Government Code.

#### HISTORY

- 1. Amendment filed 6–8–84, effective thirtieth day thereafter (Register 84, No. 23).
- Repealer filed 9–25–2000; operative 9–25–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 39).

## § 21920. Filing Athlete Agent Disclosure Statement and Amendment to Disclosure Statement.

- (a) Athlete Agents shall file the Athlete Agent Disclosure Statement (3/98) and the Amendment to Disclosure Statement (3/98) with the Secretary of State.
- (b) The fees for filing the Athlete Agent Disclosure Statement and the Amendment to Disclosure Statement are as follows:
  - (1) Athlete Agent Disclosure Statement \$30.00
- (2) Amendment to Disclosure Statement \$20.00

NOTE: Authority cited: Section 18897.97, Business and Professions Code. Reference: Sections 18895.2, 18896, 18896.2, 18896.3 and 18896.8, Business and Professions Code.

1. New section filed 6–8–98; operative 6–8–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 24). For prior history, see Register 91, No. 50.

## § 21922. Fees for Filing Domestic Partnership Declarations and Notices of Terminations.

- (a) The fees for filing a Declaration of Domestic Partnership or Notice of Termination of Domestic Partnership are as follows:
  - (1) Declaration of Domestic Partnership \$10.00
  - (2) Notice of Termination of Domestic Partnership no fee

NOTE: Authority cited: Section 298, Family Code. Reference: Section 298, Family Code.

#### HISTORY

- 1. New section filed 1–24–2000; operative 1–24–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 4). For prior history, see Register 95, No. 7.
- Change without regulatory effect amending section and Note filed 3–1–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 9).

#### § 21924. Notice Form Statements.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code.

#### HISTORY

- 1. New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.
- New section filed 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8-27-90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12-26-90 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 8-27-90 order including amendment transmitted to OAL 12-21-90 and filed 1-18-91 (Register 91, No. 11).
- Change without regulatory effect repealing section filed 8-14-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

## § 21926. Prospectus Statements Concerning the Corporation.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code.

#### HISTORY

1. New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.

- 2. New section refiled 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8-27-90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12-26-90 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 8–27–90 order including amendment transmitted to OAL 12–21–90 and filed 1–18–91 (Register 91, No. 11).
- 5. Change without regulatory effect repealing section filed 8–14–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

## § 21928. Prospectus Statements Concerning Subsidiary Corporations.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code.

#### HISTORY

- 1. New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.
- 2. New section refiled 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 8-27-90 order transmitted to OAL 12-21-90 and filed 1-18-91 (Register  $91,\,No.\,11$ ).
- 5. Change without regulatory effect repealing section filed 8–14–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

## § 21930. Prospectus Statement Concerning Parent Corporation.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code.

#### HISTOR

- 1. New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.
- 2. New section refiled 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.

[The next page is 473.]

- 4. Certificate of Compliance as to 8–27–90 order transmitted to OAL 12–21–90 and filed 1–18–91 (Register 91, No. 11).
- Change without regulatory effect repealing section filed 8-14-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

## § 21932. Prospectus Statement Concerning Commonly Owned Corporations.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code.

#### HISTORY

- New section filed 12–29–89 as an emergency: operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.
- New section refiled 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 8–27–90 order including amendment transmitted to OAL 12–21–90 and filed 1–18–91 (Register 91, No. 11).
- Change without regulatory effect repealing section filed 8-14-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

## § 21934. Modifications and Placement of Required Statements in the Prospectus.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code; 17 C.F.R. 230.415; 17 C.F.R. 230, 428.

#### HISTORY

- New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.
- 2. New section refiled 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 8-27-90 order including amendment transmitted to OAL 12-21-90 and filed 1-18-91 (Register 91, No. 11).
- Change without regulatory effect repealing section filed 8-14-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

#### § 21936. Corporations with Extensive Operations.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code.

#### HISTORY

- 1. New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.
- New section refiled 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 8-27-90 order including amendment transmitted to OAL 12-21-90 and filed 1-18-91 (Register 91, No. 11).
- 5. Change without regulatory effect repealing section filed 8–14–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

## § 21938. Updated Information.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261 through 12266, Government Code.

#### HISTORY

 New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.

- 2. New section refiled 4–20–90; operative 4–27–90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8–27–90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 8-27-90 order including amendment transmitted to OAL 12-21-90 and filed 1-18-91 (Register 91, No. 11).
- Change without regulatory effect repealing section filed 8-14-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).
- 6. Editorial correction of Reference cite (Register 95, No. 7).

#### § 21940. Transition Provisions.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12184, 12207 and 12261 through 12269, Government Code.

#### HISTORY

- 1. New section filed 12–29–89 as an emergency; operative 1–1–90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–1–90.
- New section refiled 4-20-90; operative 4-27-90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-27-90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.
- Emergency language filed 8–27–90 repealed by operation of Government Code section 11346.1(g) (Register 91, No. 11).
- 5. Certificate of Compliance as to 8–27–90 order and renumbered prior section 21942 to 21940 transmitted to OAL 12–21–90 and filed 1–18–91 (Register 91, No. 11)
- 6. Change without regulatory effect repealing section filed 8–14–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 50).

#### § 21942. Availability of Filed Information.

NOTE: Authority cited: Section 12266, Government Code. Reference: Sections 12261–12266, Government Code.

## HISTORY

- 1. New section filed 12-29-89 as an emergency; operative 1-1-90 (Register 90, No. 4). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-1-90.
- New section refiled 4-20-90; operative 4-27-90 (Register 90, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-27-90.
- 3. New section refiled 8–27–90 as an emergency pursuant to Government Code section 11346.1(h); operative 8/27/90 (Register 90, No. 42). A Certificate of Compliance must be transmitted to OAL by 12–26–90 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 8–27–90 order and renumbering of section from 21942 to 21940 transmitted to OAL 12–21–90 and filed 1–18–91 (Register 91, No. 11).

## Chapter 10. Digital Signatures

#### § 22000. Definitions.

- (a) For purposes of this chapter, and unless the context expressly indicates otherwise:
- (1) "Digitally-signed communication" is a message that has been processed by a computer in such a manner that ties the message to the individual that signed the message.
- (2) "Message" means a digital representation of information intended to serve as a written communication with a public entity.
- (3) "Person" means a human being or any organization capable of signing a document, either legally or as a matter of fact.
- (4) "Public entity" means the public entity as defined by California Government Code Section 811.2.
- (5) "Signer" means the person who signs a digitally signed communication with the use of an acceptable technology to uniquely link the message with the person sending it.
- (6) "Technology" means the computer hardware and/or software-based method or process used to create digital signatures.

NOTE: Authority cited: Section 16.5, Government Code. Reference: Section 16.5, Government Code.

1. New chapter 10 (sections 22000–22005) and section filed 6–12–98; operative 6–12–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 24).

## § 22001. Digital Signatures Must Be Created by an Acceptable Technology.

(a) For a digital signature to be valid for use by a public entity, it must be created by a technology that is acceptable for use by the State of California.

NOTE: Authority cited: Section 16.5, Government Code. Reference: Section 16.5, Government Code

#### HISTORY

1. New section filed 6–12–98; operative 6–12–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 24).

## § 22002. Criteria for State to Determine if a Digital Signature Technology Is Acceptable for Use by Public Entities.

- (a) An acceptable technology must be capable of creating signatures that conform to requirements set forth in California Government Code Section 16.5, specifically,
  - (1) It is unique to the person using it;
  - (2) It is capable of verification;
  - (3) It is under the sole control of the person using it;
- (4) It is linked to data in such a manner that if the data are changed, the digital signature is invalidated;
- (5) It conforms to Title 2, Division 7, Chapter 10 of the California Code of Regulations.

NOTE: Authority cited: Section 16.5, Government Code. Reference: Section 16.5, Government Code.

#### HISTORY

1. New section filed 6–12–98; operative 6–12–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 24).

## § 22003. List of Acceptable Technologies.

- (a) The technology known as Public Key Cryptography is an acceptable technology for use by public entities in California, provided that the digital signature is created consistent with the provisions in Section 22003(a)1–5.
- (1) Definitions For purposes of Section 22003(a), and unless the context expressly indicates otherwise:
- (A) "Acceptable Certification Authorities" means a certification authority that meets the requirements of either Section 22003(a)6(C) or Section 22003(a)6(D).
- (B) "Approved List of Certification Authorities" means the list of Certification Authorities approved by the Secretary of State to issue certification for digital signature transactions involving public entities in California
- (C) "Asymmetric cryptosystem" means a computer algorithm or series of algorithms which utilize two different keys with the following characteristics:
  - (i) one key signs a given message;
  - (ii) one key verifies a given message; and,
- (iii) the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.
  - (D) "Certificate" means a computer–based record which:
  - (i) identifies the certification authority issuing it;
  - (ii) names or identifies its subscriber;
  - (iii) contains the subscriber's public key; and
- (iv) is digitally signed by the certification authority issuing or amending it, and
- (v) conforms to widely-used industry standards, including, but not limited to ISO x.509 and PGP certificate standards.
- (E) "Certification Authority" means a person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate.

- (F) "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify a digital signature that the private key creates.
- (G) "Practice statement" means documentation of the practices, procedures and controls employed by a Certification Authority.
- (H) "Private key" means the key of a key pair used to create a digital signature.
- (I) "Proof of Identification" means the document or documents presented to a Certification Authority to establish the identity of a subscriber.
- (J) "Public key" means the key of a key pair used to verify a digital signature.
  - (K) "Subscriber" means a person who:
  - (i) is the subject listed in a certificate;
  - (ii) accepts the certificate; and
- (iii) holds a private key which corresponds to a public key listed in that certificate.
- (2) California Government Code §16.5 requires that a digital signature be 'unique to the person using it'. A public key–based digital signature may be considered unique to the person using it, if:
- (A) The private key used to create the signature on the document is known only to the signer, and
- (B) the digital signature is created when a person runs a message through a one—way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer's private key, and,
- (C) although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature, and
- (D) it is computationally infeasible to derive the private key from knowledge of the public key.
- (3) California Government Code §16.5 requires that a digital signature be 'capable of verification'. A public–key based digital signature is capable of verification if:
- (A) the acceptor of the digitally signed document can verify the document was digitally signed by using the signer's public key to decrypt the message; and
- (B) if a certificate is a required component of a transaction with a public agency, the issuing Certification Authority, either through a certification practice statement or through the content of the certificate itself, must identify which, if any, form(s) of identification it required of the signer prior to issuing the certificate.
- (4) California Government Code §16.5 requires that the digital signature remain 'under the sole control of the person using it'. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature pursuant to Evidence Code Section 669.
- (5) The digital signature must be linked to the message of the document in such a way that if the data are changed, the digital signature is invalidated.
  - (6) Acceptable Certification Authorities
- (A) The California Secretary of State shall maintain an "Approved List of Certificate Authorities" authorized to issue certificates for digitally signed communication with public entities in California.
- (B) Public entities shall only accept certificates from Certification Authorities that appear on the "Approved List of Certification Authorities" authorized to issue certificates by the California Secretary of State.
- (C) The Secretary of State shall place Certification Authorities on the "Approved List of Certification Authorities" after the Certification Authority provides the Secretary of State with a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (S.A.S. 70) "Reports on the Processing of Ser-

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vice Transactions by Service Organizations" (1992) to ensure that the Certification Authorities' practices and policies are consistent with the Certifications Authority's stated control objectives. The AICPA Statement on Auditing Standards No. 70 (1992) is hereby incorporated by reference.

- (i) Certification Authorities that have been in operation for one year or less shall undergo a SAS 70 Type One audit A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.
- (ii) Certification Authorities that have been in operation for longer than one year shall undergo a SAS 70 Type Two audit A Report Of Policies And Procedures Placed In Operation And Test Of Operating Effectiveness, receiving an unqualified opinion.
- (iii) To remain on the "Approved List of Certification Authorities" a Certification Authority must provide proof of compliance with Section 20003(a)(6)(C)(ii) to the Secretary of State every two years after initially being placed on the list.
- (D) In lieu of completing the auditing requirement in Section 22003(a)(6)(C), Certification Authorities may be placed on the "Approved List of Certification Authorities" upon providing the Secretary of State with proof of accreditation that has been conferred by a national or international accreditation body that the Secretary of State has determined utilizes accreditation criteria that are consistent with the requirements of Section 22003(a)(1)–(5).
- (i) Certification Authorities shall be removed from the "Approved List of Acceptable Certifications Authorities" unless they provide current proof of accreditation to the Secretary of State at least once per year.
- (ii) If the Secretary of State is informed that a Certification Authority has had its accreditation revoked, the Certification Authority shall be removed from the "Approved List of Certification Authorities" immediately.
- (b) The technology known as "Signature Dynamics" is an acceptable technology for use by public entities in California, provided that the signature is created consistent with the provisions in Section 22003(b)(1)–(5).
- (1) Definitions For the purposes of Section 22003(b), and unless the context expressly indicates otherwise:
- (A) "Handwriting Measurements" means the metrics of the shapes, speeds and/or other distinguishing features of a signature as the person writes it by hand with a pen or stylus on a flat surface.
- (B) "Signature Digest" is the resulting bit-string produced when a signature is tied to a document using Signature Dynamics.
- (C) "Expert" means a person with demonstrable skill and knowledge based on training and experience who would qualify as an expert pursuant to California Evidence Code §720.
- (D) "Signature Dynamics" means measuring the way a person writes his or her signature by hand on a flat surface and binding the measurements to a message through the use of cryptographic techniques.
- (2) California Government Code §16.5 requires that a digital signatures be 'unique to the person using it.' A signature digest produced by Signature Dynamics technology may be considered unique to the person using it, if:
- (A) the signature digest records the handwriting measurements of the person signing the document using signature dynamics technology, and
- (B) the signature digest is cryptographically bound to the handwriting measurements, and
- (C) after the signature digest has been bound to the handwriting measurements, it is computationally infeasible to separate the handwriting measurements and bind them to a different signature digest.
- (3) California Government Code §16.5 requires that a digital signature be capable of verification. A signature digest produced by signature dynamics technology is capable of verification if:
- (A) the acceptor of the digitally signed message obtains the handwriting measurements for purposes of comparison, and
- (B) if signature verification is a required component of a transaction with a public entity, the handwriting measurements can allow an expert

handwriting and document examiner to assess the authenticity of a signature

- (4) California Government Code §16.5 requires that a digital signature remain 'under the sole control of the person using it'. A signature digest is under the sole control of the person using it if:
- (A) the signature digest captures the handwriting measurements and cryptographically binds them to the message directed by the signer and to no other message, and
- (B) the signature digest makes it computationally infeasible for the handwriting measurements to be bound to any other message.
- (5) The signature digest produced by signature dynamics technology must be linked to the message in such a way that if the data in the message are changed, the signature digest is invalidated.

NOTE: Authority cited: Section 16.5, Government Code. Reference: Section 16.5, Government Code.

#### HISTORY

1. New section filed 6–12–98; operative 6–12–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 24).

## § 22004. Provisions for Adding New Technologies to the List of Acceptable Technologies.

- (a) Any individual or company can, by providing a written request that includes a full explanation of a proposed technology which meets the requirements of Section 22002, petition the California Secretary of State to review the technology. If the Secretary of State determines that the technology is acceptable for use with the state, the Secretary of State shall adopt regulation(s), pursuant to the Administrative Procedure Act, which would add the proposed technology to the list of acceptable technologies in Section 22003.
- (b) The Secretary of State has 180 calendar days from the date the request is received to review the petition and inform the petitioner, in writing, whether the technology is accepted or rejected. If the petition is rejected, the Secretary of State shall provide the petitioner with the reasons for the rejection.
- (1) If the proposed technology is rejected, the petitioner can appeal the decision through the Administrative Procedures Act (Government Code Section 11500 et seq).

NOTE: Authority cited: Section 16.5, Government Code. Reference: Section 16.5, Government Code.

## HISTORY

1. New section filed 6–12–98; operative 6–12–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 24).

## § 22005. Criteria for Public Entities To Use in Accepting Digital Signatures.

- (a) Prior to accepting a digital signature, public entities shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted.
- (b) Prior to accepting a digital signature, public entities shall ensure that the level of security used to transmit the signature is sufficient for the transaction being conducted.
- (c) If a certificate is a required component of a digital signature transaction, public entities shall ensure that the certificate format used by the signer is sufficient for the security and interoperability needs of the public entity.

NOTE: Authority cited: Section 16.5, Government Code. Reference: Section 16.5, Government Code.

#### HISTORY

 New section filed 6-12-98; operative 6-12-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 24).

# Chapter 11. Safe at Home Confidential Address Program

#### § 22100. Safe at Home.

The confidential address program for reproductive health care services providers, employees, volunteers, and patients established in Chap-

ter 3.2 (commencing with Section 6215) of Division 7 of Title 1 of the Government Code and operated by the Secretary of State shall be known as Safe at Home.

NOTE: Authority cited: Section 6215.9, Government Code. Reference: Sections 6215, 6215.1, 6215.2, 6215.3, 6215.4, 6215.5, 6215.6, 6215.7, 6215.8, 6215.9, 6216 and 6217. Government Code.

- 1. New chapter 11 (sections 22100–22130) filed 4–3–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
- 2. New chapter 11 (sections 22100–22130) and section refiled 8–1–2003; operative 8–1–2003 (Register 2003, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–2003 or emergency language will be repealed by operation of law on the following day.
- 3. New chapter 11 (sections 22100–22130) refiled 12–1–2003 as an emergency; operative 12–1–2003 (Register 2003, No. 49). A Certificate of Compliance must be transmitted to OAL by 3–30–2004 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 12–1–2003 order, including amendment of section heading, section and Note and renumbering of former section 22100(b)–(e) to new section 22100.1(a)–(e), transmitted to OAL 3–29–2004 and filed 5–11–2004 (Register 2004, No. 20).

### § 22100.1. Designated Community–Based Assistance Programs.

- (a) Designated community—based assistance programs referred to in this chapter and in Chapter 3.2 (commencing with Section 6215) of Division 7 of Title 1 of the Government Code shall be known as enrolling agencies. Community—based assistance programs that are eligible to be designated as enrolling agencies are nonprofit agencies that are independent abortion providers and Planned Parenthood clinics and state and local agencies.
- (b) To apply to become a designated enrolling agency an eligible community-based assistance program as defined in subdivision (a) shall submit a completed Enrolling Agency Agreement, revised September 29, 2003, to the Secretary of State. There shall be no application fee for designation as an enrolling agency.
- (c) The Enrolling Agency Agreement, revised September 29, 2003, requires all of the following:
  - (1) Name of agency or organization;
  - (2) Administrative address;
  - (3) Telephone and facsimile numbers;
- (4) Printed name and signature of agency or clinic director and the date of signature; and
- (5) Agree to: (A) attend a program orientation and training provided by the Secretary of State to assist program participant applicants with the enrollment and application process; (B) review the application checklist with applicants before forwarding the completed enrollment package and application fees to the Secretary of State within twenty–four (24) hours of receipt of a completed enrollment package; (C) maintain an adequate supply of original application materials provided by the Secretary of State and not make copies of any of the application materials; (D) fulfill the obligations and responsibilities under Chapter 3.2 (commencing with Section 6215) of the Government Code and this chapter.
- (d) The Secretary of State shall review the Enrolling Agency Agreement to determine whether: (1) the community-based assistance organization is eligible under subdivision (a); and (2) all requested information on Enrolling Agency Agreement is complete. If the community-based assistance organization is eligible under subdivision (a) and the Enrolling Agency Agreement is complete, the Secretary of State shall designate the community-based assistance program as an enrolling agency. Within ten (10) business days of actual receipt of an Enrolling Agency Agreement the Secretary of State shall mail a notice to the community-based assistance organization stating whether or not it has been designated as an enrolling agency. Each enrolling agency shall attend a program orientation provided by the Secretary of State prior to counseling program participant applicants.
- (e) An enrolling agency shall cease to be designated as such upon any of the following: (1) the Secretary of State receives written notification by an authorized representative of the enrolling agency that it is with-

drawing from the program; (2) the enrolling agency does not satisfy the definition provided in subdivision (a); or (3) the Secretary of State finds that the enrolling agency is not fulfilling its obligations and responsibilities under this chapter and Chapter 3.2 (commencing with Section 6215) of Division 7 of Title 1 of the Government Code. Termination of designation as an enrolling agency shall be in accordance with Section 22100.4. Upon the effective date of the termination, the community—based assistance organization shall not represent itself as an enrolling agency and shall return any Safe at Home applications and materials to the Secretary of State within three (3) business days.

NOTE: Authority cited: Section 6215.9, Government Code. Reference: Sections 6215.2 and 6215.8, Government Code.

#### HISTORY

1. Certificate of Compliance as to 12–1–2003 order, including renumbering and amendment of former section 22100(b)–(e) to new section 22100.1, transmitted to OAL 3–29–2004 and filed 5–11–2004 (Register 2004, No. 20).

### § 22100.2. Program Participant Application and Fees.

- (a) To apply to become a program participant a reproductive health care services facility, provider, employee, volunteer, patient, or family member of a reproductive health care services provider, employee, volunteer, or patient who is a program participant shall submit a completed Safe at Home Application & Checklist Form, revised September 29, 2003, in accordance with Section 6215.2 of the Government Code. The application fee for a reproductive health care services facility, provider, employee, volunteer, or family member of a reproductive health care services provider, employee, or volunteer who is a program participant is thirty dollars (\$30). The application fee is nonrefundable. Reproductive health care services patients who are program participants shall not be charged an application fee.
- (b) In addition to the requirements contained in Section 6215.2 of the Government Code, the Safe at Home Application & Checklist Form, revised September 29, 2003, shall include a notice that a person who willfully certifies as true any material matter pursuant to Section 6215.2 of the Government Code which he or she knows to be false is guilty of a misdemeanor and shall require all of the following:
- (1) Applicant's first, middle, and last name, date of birth, age, marital status, and sex:
- (2) Whether the program participant can sign for and accept legal documents at his or her residence or mailing address; and
  - (3) Agree to all of the following provisions.
- (A) Safe at Home is a mail forwarding service only. A program participant's mail will first be received at the Secretary of State Safe at Home address in Sacramento before it is forwarded to a program participant's address. This will result in a two to three day delay in receiving mail.
- (B) Magazines, packages, catalogs, junk mail or any mail that is not first-class, except mail from governmental agencies, will not be forwarded to a program participant's address.
- (C) Mail may not be forwarded to a program participant if it is sent to a name other than the name listed on the application form.
- (D) Completing an application form using a name other than the program participant's legal name could result in the denial of program privileges at certain agencies if a legal name is required to access their services.
- (E) All state and local government agencies must accept a Safe at Home address. Private companies, such as insurance, telephone, and utility, are not obligated to use a program participant's Safe at Home address and may require an actual residential street address.
- (F) If the program participant is a United States citizen, the program participant may become a Confidential Voter by filling out the Confidential Affidavit of Registration and Absentee Ballot Application provided with the program participant application. Once a program participant is registered, he or she shall receive an Absentee Ballot to vote by mail in future elections.
- (G) If the program participant purchases property using his or her own name, the property address location will be listed on the legal description

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filed with the county assessor's office and available for public inspection upon request.

- (H) If the program participant purposefully or accidentally gives his or her actual residence address to an agency, that agency is not required to keep that address confidential and is not responsible for its release.
- (c) Within ten (10) business days of the Secretary of State actually receiving the Safe at Home Application & Checklist Form the Secretary of State shall mail a notice to the applicant stating whether or not he or she has been certified as a program participant.
- (d) All information submitted by an applicant is confidential and shall be treated as such by enrolling agencies. Enrolling agencies shall forward all Safe at Home Applications & Checklist Forms and all attachments thereto to the Secretary of State within twenty—four (24) hours of receipt of a completed enrollment package. Enrolling agencies shall not copy, store, or maintain any of the information provided by an applicant as part of the Safe at Home Confidential Address Program, including, but not limited to, applications, attachments, supporting documentation, notes, letters, payment information, and information therein.
- (e) Enrolling agencies shall not charge any individual for counseling, application and orientation material, assistance in completing the application, forwarding the application to the Secretary of State, or any other services relating to Safe at Home.
- (f) The annual fee for reproductive health care services facilities, providers, employees, and volunteers who are health care professionals is seventy—five dollars (\$75). The annual fee is nonrefundable. The annual fee must be received by the Secretary of State no later than five (5) business days after the anniversary date of becoming a program participant. If the annual fee is received by the Secretary of State later than five (5) business days after the anniversary date of becoming a program participant, certification as a program participant shall be terminated in accordance with Section 22100.4. Reproductive health care services patients and family members of reproductive health care services patients who are program participants shall not be charged an annual fee.

NOTE: Authority cited: Section 6215.9, Government Code. Reference: Section 2166.5, Elections Code; and Sections 6215.2, 6215.5, 6215.6 and 6215.8, Government Code.

### HISTORY

1. Certificate of Compliance as to 12–1–2003 order, including renumbering of former section 22110 to new section 22100.2 and amendment of section heading, section and NoTE, transmitted to OAL 3–29–2004 and filed 5–11–2004 (Register 2004 No. 20).

### § 22100.3. Renewal Procedures.

- (a) Certification as a program participant shall be for a term of four (4) years, except for reproductive health care services facility volunteers. At least two (2) months prior to the four (4) year anniversary date of certification as a program participant, the Secretary of State shall mail a renewal application entitled Notice of Renewal, revised September 29, 2003 to each program participant. The renewal application and application fee in subdivision (a) of Section 22100.2 must be received by the Secretary of State no later than five (5) business days after the expiration of the four (4) year term. If the renewal application and application fee is received by the Secretary of State later than five (5) business days after the expiration of the four (4) year term, the certification as a program participant shall not be renewed.
- (b) The Notice of Renewal, revised September 29, 2003, shall include a notice that a person who willfully certifies as true any material matter pursuant to Section 6215.2 of the Government Code which he or she knows to be false is guilty of a misdemeanor and shall require all of the following information:
- (1) Name and program certification number of the primary program participant and minor children who are program participants;
- (2) Address or addresses that the program participant request not be disclosed for the reason that disclosure will increase the risk of acts of violence toward the applicant;
- (3) Mailing address where the program participant can be contacted by the Secretary of State, and the telephone number or numbers where the program participant can be called by the Secretary of State;

- (4) Whether the primary program participant is a reproductive health care services provider, employee, or patient;
- (5) Affirmation of the program participant that he or she continues to live in fear for his or her safety or that of his or her family or the safety of a minor or incapacitated program participant in the care of the person making the affirmation and that continued participation in Safe at Home is requested; and
- (6) Signature of the program participant or legal guardian of the program participant and date of signature.
- (c) Certification as a program participant for a reproductive health care services facility volunteer shall be for a term that will expire six (6) months after the last date he or she volunteers at the facility. A program participant who ceases to volunteer at a reproductive health care services facility shall immediately notify the Secretary of State in writing as to the last date he or she volunteered at a reproductive health care services facility. The Secretary of State shall send a letter by certified mail to the program participant confirming receipt of the notification and identifying the date the certification shall expire.

NOTE: Authority cited: Sections 6215.2(e) and 6215.9, Government Code. Reference: Section 6215.2, Government Code.

#### HISTORY

Certificate of Compliance as to 12–1–2003 order, including renumbering of former section 22120 to new section 22100.3 and amendment of section and NOTE, transmitted to OAL 3–29–2004 and filed 5–11–2004 (Register 2004, No. 20).

### § 22100.4. Termination and Appeal Procedures.

- (a) Notification of termination shall be sent to program participants and enrolling agencies by certified mail. The notification of termination shall include the grounds for termination, the date in which termination shall be effective, and the appeal procedures.
- (b) A program participant or enrolling agency shall have five (5) business days from date of receipt of the notification of termination to provide the Secretary of State with a statement signed by the program participant or authorized representative of the enrolling agency appealing the termination. The statement shall include argument and facts as to why the Secretary of State should not terminate the certification or designation. Any evidence, including supporting declarations, shall be submitted with the signed statement. The Secretary of State shall have three (3) business days from the date of receipt to review the appeal, issue a decision, and send by certified mail the decision to the program participant or enrolling agency.
- (c) If the appeal process for a program participant extends beyond the termination date identified in the notification of termination, the Secretary of State shall continue to act as though the certification is valid until the Secretary of State issues a decision. If the decision is to terminate the program participant's certification, the termination shall be effective three (3) business days after the decision is mailed by certified mail to the program participant. The decision shall also state the date in which the program participant's certification shall be terminated.
- (d) If the appeal process for an enrolling agency extends beyond the termination date identified in the notification of termination, the community-based assistance organization shall not represent itself as an enrolling agency, unless and until such time as the Secretary of State reinstates the designation as an enrolling agency.

NOTE: Authority cited: Section 6215.9, Government Code. Reference: Sections 6215.3, 6215.4 and 6215.8, Government Code.

### **HISTORY**

Certificate of Compliance as to 12-1-2003 order, including renumbering of former section 22130 to new section 22100.4 and amendment of Note, transmitted to OAL 3-29-2004 and filed 5-11-2004 (Register 2004, No. 20).

### § 22110. Application and Annual Fees.

NOTE: Authority cited: Section 6215.9, Government Code. Reference: Section 6215.2(c), Government Code.

### HISTORY

New section filed 4-3-2003 as an emergency; operative 4-3-2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-1-2003 or emergency language will be repealed by operation of law on the following day.

- New section refiled 8-1-2003; operative 8-1-2003 (Register 2003, No. 31). A
  Certificate of Compliance must be transmitted to OAL by 12-1-2003 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 12–1–2003 as an emergency; operative 12–1–2003 (Register 2003, No. 49). A Certificate of Compliance must be transmitted to OAL by 3–30–2004 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 12–1–2003 order, including renumbering of former section 22110 to new section 22100.2, transmitted to OAL 3–29–2004 and filed 5–11–2004 (Register 2004, No. 20).

#### § 22120. Renewal Procedures.

NOTE: Authority cited: Sections 6215.2(e) and 6215.9, Government Code. Reference: Section 6215.2(e), Government Code.

#### HISTORY

- 1. New section filed 4–3–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 8–1–2003; operative 8–1–2003 (Register 2003, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–2003 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 12–1–2003 as an emergency; operative 12–1–2003 (Register 2003, No. 49). A Certificate of Compliance must be transmitted to OAL by 3–30–2004 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 12–1–2003 order, including renumbering of former section 22120 to new section 22100.3, transmitted to OAL 3–29–2004 and filed 5–11–2004 (Register 2004, No. 20).

### § 22130. Termination and Appeal Procedures.

NOTE: Authority cited: Section 6215.9, Government Code. Reference: Section 6215.4(c), Government Code.

#### HISTORY

- 1. New section filed 4–3–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 8–1–2003; operative 8–1–2003 (Register 2003, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–1–2003 or emergency language will be repealed by operation of law on the following day.
- 3. New section refiled 12–1–2003 as an emergency; operative 12–1–2003 (Register 2003, No. 49). A Certificate of Compliance must be transmitted to OAL by 3–30–2004 or emergency language will be repealed by operation of law on the following day.
- 4. Certificate of Compliance as to 12–1–2003 order, including renumbering of former section 22130 to new section 22100.4, transmitted to OAL 3–29–2004 and filed 5–11–2004 (Register 2004, No. 20).

### Chapter 12. Victims of Corporate Fraud Compensation Fund

### § 22500. Definitions.

As used in this Chapter:

- (a) "Victims of Corporate Fraud Compensation Fund" means the separate account in the State Treasury established pursuant to Section 1502.5 of the Corporations Code for purposes of carrying out the provisions of that section.
- (b) "Application" means a request for payment from the Victims of Corporate Fraud Compensation Fund submitted to the Secretary of State pursuant to this Chapter.
- (c) "Party" means either the claimant, the judgment debtor, or the Secretary of State.
- (d) "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.
- (e) "Claimant" means an aggrieved person who submits an application pursuant to this Chapter.
- (f) "Judgment debtor" means a corporation against which a judgment, arbitration award, or criminal restitution order has been entered for conduct constituting intentional fraud.
- (g) "Final judgment" means a judgment, arbitration award, or criminal restitution order for which the period for appeal has expired, enforcement of which is not barred by the order of any court or by any statutory provi-

- sion, and which has not been nullified or rendered void by any court order or statutory provision, and for which the claimant has not been otherwise reimbursed. Only final judgments dated January 1, 2003, or thereafter shall be considered for payment from the Victims of Corporate Fraud Compensation Fund pursuant to these regulations.
- (h) "Court of competent jurisdiction" means a small claims, municipal, or superior court of the State of California, or a United States district court or United States bankruptcy court sitting to conduct its affairs within the boundaries of the State of California, but does not include state or federal courts located in another state.
- (i) "County in which a judgment was rendered" means the county within California in which the court issuing the judgment or restitution order sits or, if the claim is based on an arbitration award, the county in which the arbitration was conducted, or in which the claimant resides.
- (j) Where appropriate to the context the singular number includes the plural and the plural number includes the singular.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

1. New chapter 12 (sections 22500–22519) and section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22501. Application for Payment from Victims of Corporate Fraud Compensation Fund.

- (a) When an aggrieved person obtains (1) a final judgment in a court of competent jurisdiction, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code, or (2) an arbitration award that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1280 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, the aggrieved person may, upon the judgment becoming final, and after the time for appeal has passed, submit an application to the Secretary of State for payment from the Victims of Corporate Fraud Compensation Fund, within the limitations specified in Section 22515, of the amount unpaid on the judgment that represents an actual and direct loss to the claimant in the transaction, excluding punitive damages, attorneys fees and costs.
- (b) An application shall be made on a form prescribed by the Secretary of State and shall include the information specified in Section 22502. The application shall be verified by the claimant in the manner specified in Section 446 of the Code of Civil Procedure for the verification of a pleading. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.
- (c) If any documents or other attachments are submitted with the application, the application shall contain a verification by the claimant that the documents are true and correct copies of the originals, and if such documents purport to be copies of documents filed in court, that they are true and correct copies of the originals filed with the court.
- (d) The application shall be delivered in person or by certified mail to the Office of the Secretary of State, Business Programs Division, Victims of Corporate Fraud Compensation Fund, 1500 11th Street, Sacramento, California 95814 not later than eighteen months after the final judgment has become final.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22502. Form of Application.

- (a) The verified application form shall include the following:
- (1) The name and address of the claimant.
- (2) If the claimant is represented by an attorney, the name, business address, and telephone number of the attorney. If the claimant is not being represented by an attorney in the filing of the application, a telephone number where the claimant can be reached during regular business hours must be included.
- (3) The identification of the judgment and the date on which it became final.
- (4) The amount of the claim, not to exceed the amount of the actual and direct loss that remains unreimbursed from any source and an explanation of its computation.
- (5) A detailed narrative statement of the facts explaining the allegations of the complaint upon which the underlying judgment is based.
- (6)(A) Except as provided in subparagph (B), a statement by the claimant that the complaint or arbitration award upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, "conscientiously and in good faith" means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint or arbitration proceeding, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint or arbitration proceeding or dismissed from the complaint or arbitration proceeding intentionally and without good cause, and that the claimant employed no other procedural means contrary to the diligent prosecution of the complaint or arbitration award for the purpose of seeking to qualify for the Victims of Corporate Fraud Compensation Fund.
- (B) For the purpose of an application based on a criminal restitution order, all of the following statements by the claimant:
- 1. The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.
- 2. The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.
- 3. The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Victims of Corporate Fraud Compensation Fund.
- (7) The name and address of the judgment debtor or, if not known, the names and addresses of persons who may know the judgment debtor's present whereabouts.
  - (8) The following representations and information from the claimant:
- (A) That the claimant is not a spouse or immediate member of the family of the judgment debtor nor a personal representative of the spouse or immediate member of the family of the judgment debtor. For the purposes of this section, judgment debtor shall include the officers and directors of the judgment debtor.
- (B) That the claimant has complied with all of the requirements of this Chapter.
- (C) That the judgment underlying the claim meets the requirements of subdivision (a) of Section 22501.
- (D) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets available to be sold or applied to satisfy the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.
- (E) That he or she has diligently pursued collection efforts against all judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.
- (F) That the underlying judgment and debt have not been discharged in bankruptcy, or, in the case of a bankruptcy proceeding that is open at

- or after the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable.
- (G) That the application was mailed or delivered to the Secretary of State no later than eighteen months after the underlying judgment became final.
- (b) The application shall include all of the documents and information enumerated below:
- (1) Proof that the judgment debtor was served with the Notice and Application.
- (2) A copy of the judgment showing it to be a final judgment as defined in this article, and any findings of fact, conclusions of law, jury verdicts, jury special verdicts, statements of decision, memorandum decisions, or any other indication by the court or jury, as the case may be, of its decision and the reasons for the decision, and copies of any post trial orders or rulings. If the matter was submitted to arbitration, a copy of the arbitration decision and any other documentation supporting the arbitration award. If the original judgment was appealed, copies of the appellate decision and remittitur.
- (3) Copies of the original complaint, answer, cross-complaints, answers to cross-complaints, and all amendments or other subsequent versions of any of those documents.
- (4) Copies of any pre-trial or post-trial briefs, settlement conference statements, or briefs submitted in arbitration by any party.
- (5) A listing of all depositions, interrogatories, requests for admission, and other discovery taken in the underlying action by any party, describing the party or parties taking the deposition(s), the party propounding the interrogatories, the party propounding the requests for admission, or the party propounding the other discovery requests, the deponent(s), the party responding to any discovery request, and a list of all persons present at each deposition.
- (6) Copies of any demurrers or motions for summary judgment, supporting documents, and rulings and orders thereon.
- (7) A description by the claimant of the basis for each element of damages awarded.
- (8) If the only judgment debtor was an officer or director, a statement as to why the corporation was neither sued nor taken to judgment.
- (9) If any codefendants were dismissed from the underlying lawsuit, or if any party was dismissed from arbitration of the claims that are the basis of the underlying lawsuit, a statement of the reason for dismissal as to each such codefendant or party to the arbitration.
- (10) A list of the names of any witnesses who testified at the underlying trial, or arbitration of the claims that are the basis of the underlying lawsuit, and the present or last known addresses of the witnesses to the extent known by the claimant.
- (11) If the claimant claimed any loss related to the transaction as a deduction on the claimant's tax return or returns, a description of the amount of the tax benefit derived therefrom.
- (12) A statement whether the judgment debtor is known to have filed bankruptcy. If so, a statement whether the claimant was named as a creditor in the bankruptcy, filed a claim in the bankruptcy, and pursued an adversary complaint to have the debt determined to be nondischargeable. If the judgment debtor filed bankruptcy and the claimant failed to take any of the foregoing actions, a statement as to why the claimant failed to take such actions.
- (13) Abstracts of judgment bearing evidence of having been recorded in the county or counties in which the judgment debtor may possibly have assets.
- (14) If any of the above items are not included in the initial application, or are requested in a deficiency letter and not supplied, a statement under penalty of perjury that the claimant has made a diligent effort to locate and produce the items but has been unable to locate them or has found that they do not exist.
- (15) All documents or copies of documents submitted to meet the requirements of this section must be clear and legible.
- (c) The Secretary of State shall include with the application form detailed instructions with respect to the documentary evidence, pleadings,

court rulings, products of discovery and other documentation from the underlying litigation to be appended to the application by the claimant and a notice to the claimant of the claimant's obligation to protect the underlying judgment from discharge of bankruptcy.

- (d) An application that is based on a criminal restitution order shall comply with all the requirements of this Chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:
  - (1) "Judgment" means the criminal restitution order.
- (2) "Complaint" means the facts of the underlying transaction upon which the criminal restitution order is based.
- (3) "Judgment debtor" means any defendant corporation that is the subject of the criminal restitution order.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22503. Notice Requirements.

- (a) The claimant shall serve a copy of the notice prescribed in subdivision (e) together with a copy of the application upon the judgment debtor by personal service, by certified mail, or by publication, as set forth in subdivision (b).
- (b) If the judgment debtor is a California corporation with a current statement of information on file with the Secretary of State pursuant to Section 1502 of the Corporations Code, or a foreign corporation with a current statement of information on file with the Secretary of State pursuant to Section 2117 of the Corporations Code, service of the notice and a copy of the application may be made by certified mail addressed to the agent for service of process designated on the corporation's statement of information. If the judgment debtor does not have a current statement of information on file with the Secretary of State pursuant to Section 1502 or Section 2117 of the Corporations Code, and personal service cannot be effected through the exercise of reasonable diligence, the claimant shall serve the judgment debtor by one publication of the notice in each of two successive weeks in a newspaper of general circulation published in the county of the judgment debtor's last known principal business office in the State of California.
- (c) If the application is served upon the judgment debtor by certified mail, service is complete five days after mailing. Personal service is complete on the date of service. Service by publication is complete upon completion of the second week of publication.
- (d) If a judgment debtor wishes to contest payment of an application by the Secretary of State, the judgment debtor shall mail or deliver a written response to the application addressed to the Secretary of State at the address specified in Section 22505 within 30 days after service of the notice and application, and shall mail or deliver a copy of the response to the claimant. If a judgment debtor fails to mail or deliver a timely response, the judgment debtor shall have waived the judgment debtor's right to present objections to payment of the application.
- (e) The notice served upon the judgment debtor shall include the following statement:

NOTICE: Based upon a judgment entered against you in favor of \_\_\_\_\_ (name of claimant), application for payment from the Victims of Corporate Fraud Compensation Fund is being made to the Secretary of State.

If payment is made from the Victims of Corporate Fraud Compensation Fund, your corporation will be automatically assessed the amount of the payment plus interest at the prevailing legal rate by the Secretary of State. If your corporation does not pay the assessed amount, your corporation will be suspended and cannot be reinstated until the Victims of Corporate Fraud Compensation Fund has been reimbursed for the amount paid plus interest at the prevailing legal rate.

If you wish to contest payment of the application by the Secretary of State, you must submit a written response to the application which must be addressed to the Secretary of State at the Office of the Secretary of

State, Business Programs Division, Victims of Corporate Fraud Compensation Fund, 1500 11th Street, Sacramento, California 95814 within 30 days after mailing, delivery, or publication of this notice and mail or deliver a copy of that response to the claimant. If you fail to do so, you will have waived your right to present your objections to payment of the application.

(f) If a judgment debtor fails to mail or deliver a written response to the application with the Secretary of State within 30 days after personal service, service by mail, or final publication of the notice, the judgment debtor shall not thereafter be entitled to notice of any action taken or proposed to be taken by the Secretary of State with respect to the application. NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22504. Response by Judgment Debtor.

- (a) The response by a judgment debtor must be verified and must contain a verified proof of service showing that a copy of the response was sent to the claimant, or if the claimant is represented by an attorney, to the claimant's attorney, at the address specified in the application for the claimant or the claimant's attorney.
- (b) If the judgment debtor is not represented by an attorney in objecting to payment of the application, the response must contain the judgment debtor's name, the address at which the judgment debtor wishes to receive correspondence and notices relating to the application, and a telephone number where the judgment debtor can be reached during regular business hours. If the judgment debtor is represented by an attorney in objecting to the application, the response must contain the name, business address, and telephone number of the attorney.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22505. Subsequent Service of Correspondence and Notices.

After initial submission of the application to the Secretary of State and service on the judgment debtor by the claimant as provided by Sections 22501 and 22503, and after service of a response by the judgment debtor as provided by Sections 22503 and 22504, if any, all parties shall be served with subsequent correspondence and notices by first class mail as follows:

- (a) The Secretary of State shall be served at: Office of the Secretary of State, Business Programs Division, Victims of Corporate Fraud Compensation Fund, 1500 11th Street, Sacramento, California 95814.
- (b) The claimant shall be served at the claimant's address as specified in the application, or if the claimant is represented by an attorney, at the address of the attorney as specified in the application.
- (c) The judgment debtor shall be served at the judgment debtor's address as specified in the response, or if the judgment debtor is represented by an attorney, at the address of the attorney as specified in the response.

If the claimant or judgment debtor later wishes to be served at an address other than as specified above, such party shall notify all other parties by first class mail of the new address.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22506. Incomplete Application.

(a) If the Secretary of State determines that the application as submitted by the claimant fails to comply with the requirements of Sections 22501 and 22502, the Secretary of State shall, within 21 calendar days after receipt of the application, mail an itemized description of deficiencies to the claimant.

- (b) The time within which the Secretary of State is required to act pursuant to Section 22507 shall be measured from the date of receipt by the Secretary of State of an application that is deemed complete. In the event of an irreconcilable dispute between the claimant and the Secretary of State on the question of whether the application is complete, the claimant may immediately file the claim with the court pursuant to Section 22512.
- (c) In the event that the Secretary of State has mailed one or more itemized lists of deficiencies to a claimant as provided by subdivision (a) of this section, and if after 30 calendar days the Secretary of State has received no response to the latest such list of deficiencies, the Secretary of State may notify the claimant that unless the application is complete within a specified period of time of not less than 10 days, the application will be denied.
- (d) If no response has been received from the claimant after the passing of the deadline specified by the Secretary of State pursuant to subdivision (c) of this section, the Secretary of State may deny the application.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

 New section filed 3-9-2004; operative 3-9-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22507. Review by the Secretary of State.

- (a) Applications received each year by the Secretary of State no later than March 31 shall be considered for payment during the fiscal year in which the application is received. Under no circumstances shall the Secretary of State approve the payment of claims that total more than the amount of funds available for the fiscal year in the Victims of Corporate Fraud Compensation Fund.
- (b) Applications received each year by the Secretary of State after March 31 shall be considered for payment during the following fiscal year.

### HISTORY

1. New section filed 3-9-2004; operative 3-9-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22508. Final Decision on Application.

- (a) The Secretary of State shall render a final written decision on the application no later than July 31 in the fiscal year following the fiscal year in which the application was submitted unless the claimant agrees in writing to extend the time within which the Secretary of State may render a decision. If the Secretary of State fails to render a written decision in response to the application by July 31 in the fiscal year following the fiscal year in which the application was submitted or within the extended period agreed to by the claimant, the application shall be deemed to have been denied by the Secretary of State on the final day for rendering the decision.
- (b) The Secretary of State may deny or grant the application or may enter into a compromise with the claimant to pay less in settlement than the full amount of the application. If the claimant refuses to accept a settlement of the application offered by the Secretary of State, the written decision of the Secretary of State shall be to deny the application or it shall be deemed denied if a written decision is not rendered within the time specified in subdivision (a). Evidence of settlement offers and discussions between the Secretary of State and the claimant shall not be competent evidence in judicial proceedings undertaken by the claimant pursuant to Section 22512.
- (c) In considering and investigating an application, the Secretary of State may use all appropriate means of investigation and discovery available under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22509. Form of Decision.

- (a) The Secretary of State shall give written notice of a decision rendered with respect to the application to the claimant and to a judgment debtor who has submitted a timely response to the application in accordance with Section 22504.
- (b) If the application is denied, the notice to the claimant and judgment debtor shall include the following:

Claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application in a superior court of this state not later than six months after receipt of this notice, pursuant to Section 22512. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in (1) the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or (2) the Superior Court of the County of Sacramento.

(c) If the decision of the Secretary of State is to make a payment to the claimant from the Victims of Corporate Fraud Compensation Fund, the following notice shall be given to the judgment debtor along with a copy of the decision of the Secretary of State:

The decision of the Secretary of State on the application of (name of claimant) is to pay \$\_\_\_\_\_ (amount of payment) from the Victims of Corporate Fraud Compensation Fund. A copy of that decision is enclosed

Pursuant to Section 22516, your corporation will be assessed the amount of the payment plus interest at the prevailing legal rate, payable on the date your next statement of information pursuant to Section 1502 or Section 2117 of the Corporations Code is required to be filed. If your corporation does not pay the assessed amount, your corporation will be suspended and will not be eligible for reinstatement until you have reimbursed the Victims of Corporate Fraud Compensation Fund for this payment plus interest at the prevailing legal rate.

If you desire a judicial review of the decision of the Secretary of State, you may petition the superior court for a writ of mandamus. If the underlying judgment is a California state court judgment, the petition shall be filed in the court in which the judgment was entered. If the underlying judgment is a federal court judgment, the petition shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento. To be timely, the petition must be filed with the court, and copies served on the Secretary of State and claimant, within 30 days of service of this notice.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22510. Procedure upon Filing of Writ of Mandamus by Judgment Debtor.

- (a) If the decision of the Secretary of State is to make a payment out of the Victims of Corporate Fraud Compensation Fund, and the judgment debtor files a writ of mandamus as provided in Section 22509, no payment shall be made of the pending application unless the writ of mandamus has been denied and such denial has become final.
- (b) If such writ of mandamus is granted on the basis that the claimant has not met the requirements for payment from the Victims of Corporate Fraud Compensation Fund, the application shall be deemed denied on the date that the judgment becomes final.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22511. Proration Where Aggregate Valid Applications Exceed Liability Limits.

If, at any time prior to the rendering of a decision on an application, the Secretary of State makes a preliminary determination that the aggregate valid applications of all aggrieved persons are likely to exceed the funds available for distribution from the Victims of Corporate Fraud Compensation Fund, the Secretary of State shall distribute the available funds among them in the ratio that their respective losses, as supported in their applications, bear to the aggregate of the valid applications. Distribution of any moneys shall be among the persons entitled to share therein, without regard to the order of priority in which their respective judgments may have been obtained or the date(s) the applications were submitted to the Secretary of State.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22512. Claimant Appeal Process.

(a) A claimant against whom the Secretary of State has rendered a decision denying an application pursuant to Section 22509 may, within six months after the mailing of the notice of the denial, file a verified application in superior court for an Order Directing Payment Out of the Victims of Corporate Fraud Compensation Fund based upon the grounds set forth in the application to the Secretary of State. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in (1) the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or (2) the Superior Court of the County of Sacramento.

(b) A copy of the verified application shall be served upon the Secretary of State and upon the judgment debtor. A certificate or affidavit of service shall be filed by the claimant with the court. Service on the Secretary of State may be made by certified mail addressed to the address set forth in subdivision (a) of Section 22505. Service upon a judgment debtor may be made in accordance with subdivision (c) of Section 22505. The notice served upon the judgment debtor shall read as follows:

NOTICE: An application has been filed with the court for a payment from the Victims of Corporate Fraud Compensation Fund that was previously denied by the Secretary of State. If, as a result of this judicial action, the Secretary of State makes a payment from the Victims of Corporate Fraud Compensation Fund pursuant to court order, your corporation will be automatically assessed the amount of the payment plus interest at the prevailing legal rate by the Secretary of State. If your corporation does not pay the assessed amount, your corporation will be suspended until the Victims of Corporate Fraud Compensation Fund has been reimbursed for the amount paid plus interest at the prevailing legal rate.

If you wish to defend in court against this application, you must file a written response with the court within 30 days after having been served with a copy of the application. If you do not file a written response, you will have waived your right to defend against the application.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22513. Prerequisite for Payment from Victims of Corporate Fraud Compensation Fund.

Whenever the court proceeds upon an application under Section 22512, it shall order payment from the Victims of Corporate Fraud Compensation Fund only upon a determination that the aggrieved party has a valid cause of action under Section 22501, and has complied with Section 22502.

The Secretary of State may defend any such action on behalf of the Secretary of State and shall have recourse to all appropriate means of de-

fense and review, including examination of witnesses and the right to relitigate any issues material and relevant in the proceeding against the Victims of Corporate Fraud Compensation Fund which were determined in the underlying action on which the judgment in favor of the applicant was based. If the judgment in favor of the applicant was by default, stipulation, consent, or pursuant to Section 594 of the Code of Civil Procedure, or whenever the action against the corporation was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the corporation was for fraud, misrepresentation, or deceit. Otherwise, the judgment shall create a rebuttable presumption of the fraud, misrepresentation, or deceit by the corporation, which presumption shall affect the burden of producing evidence.

The Secretary of State may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of Section 22501; provided, however, the Secretary of State shall give written notice at least 10 days before the motion is scheduled to be heard.

The Secretary of State may, subject to court approval, compromise a claim based upon the application of an aggrieved party. The Secretary of State shall not be bound by any compromise or stipulation of the judgment debtor.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22514. Rights of Judgment Debtor.

The judgment debtor may defend an action against the Victims of Corporate Fraud Compensation Fund on the judgment debtor's own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. All matters, including, but not limited to, the issues of fraud, misrepresentation, or deceit, finally adjudicated on the merits in the underlying action are conclusive as to the judgment debtor and the claimant in the proceeding against the Victims of Corporate Fraud Compensation Fund.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9-2004; operative 3-9-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22515. Limitations on Payment from the Victims of Corporate Fraud Compensation Fund.

(a) Notwithstanding any other provision of this chapter and regardless of the number of persons aggrieved in a transaction or the number of judgments against a judgment debtor, the payment from the Victims of Corporate Fraud Compensation Fund shall not exceed twenty thousand dollars (\$20,000) for any one transaction.

(b) When multiple judgment debtors are involved in a transaction and the conduct of two or more of the judgment debtors results in a judgment meeting the requirements of Section 22501, the claimant may seek recovery from the Victims of Corporate Fraud Compensation Fund based on the judgment against any of the judgment debtors, subject to the limitations of this section.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22516. Recovery from Corporation upon Payment from Victims of Corporate Fraud Compensation Fund.

If the Secretary of State pays from the Victims of Corporate Fraud Compensation Fund any amount in settlement of a claim or toward satisfaction of a judgment against a corporation, the corporation shall be required to pay to the Victims of Corporate Fraud Compensation Fund the amount of the claim, plus interest at the prevailing legal rate applicable to a judgment rendered in any court of this state, at the time the corporation files its next statement of information pursuant to Section 1502 or Section 2117 of the Corporations Code. This payment is in addition to any other fees or penalties the corporation is required to pay in conjunction with the filing of the statement of information. If the corporation fails to make the required payment to the Victims of Corporate Fraud Compensation Fund upon the filing of its statement of information, the corporation shall be suspended in the manner set forth in Section 2204, Section 2205, or Section 2206 of the Corporations Code, as applicable. A discharge in bankruptcy shall not relieve a corporation from the penalties and disabilities provided in this Chapter.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

#### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22517. Disposition of Funds Received by the Secretary of State.

Any sums received by the Secretary of State pursuant to any provisions of this Chapter shall be deposited in the State Treasury and credited to the Victims of Corporate Fraud Compensation Fund.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22518. Rights of Claimant.

When the Secretary of State has paid from the Victims of Corporate Fraud Compensation Fund any sum to the claimant, the Secretary of State shall be subrogated to all of the rights of the claimant and the claimant shall assign all of the claimant's rights, title, and interest in the judgment to the Secretary of State and any amount and interest so recovered by the Secretary of State on the judgment shall be deposited to the Victims of Corporate Fraud Compensation Fund.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### HISTORY

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### § 22519. Waiver of Rights.

The failure of an aggrieved person to comply with all of the provisions of this Chapter shall constitute a waiver of any rights hereunder.

NOTE: Authority cited: Section 1502.5, Corporations Code. Reference: Section 1502.5, Corporations Code.

### History

1. New section filed 3–9–2004; operative 3–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 11).

### Chapter 13. Uniform Commercial Code

### Article 1. General Provisions

### § 22600. Definitions.

- (a) "Address" means a name or other identifying information, either a street address, route number (may include box) or PO Box number and city, state or country, and zip code, if applicable.
- (b) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.
- (c) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.
- (d) "Business Programs Automation on-line system" means the webbased electronic filing service provided by the Secretary of State for the

entry, transmission and retrieval of UCC records and requests for information.

- (e) "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.
- (f) "Filing Officer statement" means a statement entered by the Secretary of State into the Business Programs Automation on–line system to correct an error made by the Secretary of State's office.
- (g) "Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.
- (h) "Initial Financing Statement" means a UCC record containing the information required to be in an initial financing statement, and that causes the Secretary of State to establish the initial record of existence of a financing statement.
- (i) "Remitter" means a person who tenders a UCC record to the Secretary of State for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the Secretary of State, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.
- (j) "UCC" means the Uniform Commercial Code as adopted in this state.
- (k) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement and shall not be deemed to refer exclusively to paper or paper-based writings.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9526, Commercial Code.

#### HISTORY

1. New chapter 13 (articles 1–6, sections 22600–22601.8), article 1 (sections 22600–22600.2) and section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22600.1. UCC Record Delivery.

UCC records may be tendered for filing at the Secretary of State's office as follows.

- (a) Personal delivery at the Secretary of State's street address. The file time for a UCC record delivered by this method is when delivery of the UCC record is accepted by the Secretary of State (even though the UCC record may not yet have been accepted for filing and subsequently may be rejected).
- (b) Courier delivery at the Secretary of State's street address. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC record is first examined by the Secretary of State's office for processing (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery.
- (c) Postal service delivery to the Secretary of State's mailing address. The file time for a UCC record delivered by this method is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered after regular business hours or on a day the Secretary of State's office is not open for business will have a filing time of the close of business on the next day the Secretary of State's office is open for business.
- (d) Telefacsimile delivery to the Secretary of State's fax filing telephone number. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, 5:00 P.M. on a day the Secretary of State's office is open to the public next following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered after regular business hours or on a day the Secretary of State's office is not open for business, will have a filing time of the close of business on the next day the Secretary of State's office is open for business.
- (e) Electronic filing. UCC records, excluding correction statements, may be transmitted electronically using the XML standard approved by the International Association of Commercial Administrators. UCC re-

cords may also be transmitted electronically through on-line entry. The file date and time for a UCC record delivered by this method are the date and time that the Business Programs Automation on-line system receives it.

The appropriate fee shall be paid at the time a UCC record is submitted to the Secretary of State for filing. The methods of payment are United States currency, check, money order, cashier's check, credit card, electronic funds transfer, and debit to a prepaid customer account established with the Secretary of State.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9516, Commercial Code: and Section 12194, Government Code.

#### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22600.2. Search Request Delivery.

UCC search requests may be delivered to the Secretary of State's office by any of the means by which UCC records may be delivered to the Secretary of State's office. A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered. NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9523, Commercial Code.

### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### Article 2. Acceptance and Refusal of Records

### § 22600.3. Continuation Period for Financing Statements.

(a) First day permitted. The first day on which a continuation may be filed is the date corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse.

(b) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9515, Commercial Code.

### HISTORY

1. New article 2 (sections 22600.3–22600.5) and section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22600.4. Procedure upon Refusal.

If the Secretary of State's office finds grounds under Section 9516 of the UCC to refuse acceptance of a UCC record, the Secretary of State's office shall return the record. Unless otherwise requested, the Secretary of State's office may retain the fee pending resubmission of the record. NOTE: Authority cited: Section 9526, Commercial Code. Reference: Sections 9516 and 9520, Commercial Code.

### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22600.5. Refusal Errors.

If a secured party or a remitter demonstrates to the satisfaction of the Secretary of State's office that a UCC record that was refused for filing should not have been refused, the Secretary of State's office will file the UCC record as provided in these rules with a filing date and time assigned when such filing occurs. The Secretary of State's office will also file a filing officer statement that states the effective date and time of filing which shall be the date and time the UCC record was originally tendered for filing.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Sections 9516, 9520 and 9526, Commercial Code.

#### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### Article 3. Business Programs Automation On–Line System and Electronic Records

### § 22600.6. IACA Standard Adopted.

The XML standard adopted by the International Association of Commercial Administrators is adopted in this state for electronic transmission of UCC records.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9516, Commercial Code.

#### HISTORY

1. New article 3 (sections 22600.6–22600.8) and section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22600.7. Record Filing Procedures.

- (a) UCC records may be submitted directly to the Secretary of State's office using the Business Programs Automation on–line system which can be accessed through the Secretary of State's website.
- (b) Record Indexing. A submitter may index a record into the Business Programs Automation on–line system by following the indexing procedures in the manner set forth in Section 22601 of these rules.
- (c) Filing Date. The filing date of a UCC record is the date the UCC record is received as described in subdivision (e) of Section 22600.1.
- (d) Filing Time. The filing time of a UCC record is the time described in subdivision (e) of Section 22600.1.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9519, Commercial Code.

#### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22600.8. Search Request Procedures.

Search requests may be submitted directly to the Secretary of State's office using the Business Programs Automation on–line system which can be accessed through the Secretary of State's website.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9523, Commercial Code.

### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### Article 4. Filing and Data Entry Procedures

### § 22600.9. Errors of the Secretary of State's Office as the Filing Officer.

The Secretary of State's office may correct data entry errors of the Secretary of State's personnel in the Business Programs Automation on–line system at any time. If the correction is made after the Secretary of State has issued a certification date that includes the filing date of a corrected record, the Secretary of State's office shall proceed as follows. A filing officer statement record relating to the relevant initial financing statement will be placed in the Business Programs Automation on–line system on the date that the error was reported. The filing officer statement must provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the Business Programs Automation on–line system.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9526, Commercial Code.

### HISTORY

1. New article 4 (sections 22600.9–22601.1) and section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22601. Data Entry of Names — Designated Name Fields.

(a) Organization Names. Organization names are entered into the Business Programs Automation on-line system as set forth in the UCC record, even if it appears that multiple names are set forth in the record or it appears that the name of an individual has been included in the field designated for an organization name.

(b) Individual Names. On a form that designates separate fields for first, middle, and last names and any suffix, the Secretary of State's office enters the names into the first, middle, and last name and suffix fields in the Business Programs Automation on–line system exactly as set forth on the form.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9519, Commercial Code.

#### HISTORY

1. New section filed 6-21-2004: operative 6-21-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22601.1. Master Filings.

- (a) The Secretary of State's office may accept for filing a single UCC record for the purpose of amending or assigning more than one financing statement. Master amendments may accomplish one or both of the following purposes: amendment to change secured party name: amendment to change secured party address. Master assignments may accomplish a full assignment from a single assignor.
- (b) A master filing shall consist of an electronic record describing the requested amendment or assignment submitted to the Secretary of State's office pursuant to Section 22600.7 and a machine readable file furnished by the remitter containing appropriate indexing information.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Sections 9519 and 9526, Commercial Code.

#### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### Article 5. Information Request and Search Response

### § 22601.2. General Requirements.

The Secretary of State's office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement, and each filed UCC record relating to the initial financing statement.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9523, Commercial Code.

### HISTORY

1. New article 5 (sections 22601.2–22601.6) and section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22601.3. Search Requests.

Search requests shall contain the following information.

- (a) Name Searched. A search request shall set forth the name of a debtor to be searched and must specify whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.
- (b) Requesting Party. A search request shall include the name and address of the person to whom the search report is to be sent.
- (c) Fee. The appropriate fee shall be paid at the time the request is submitted to the Secretary of State. The methods of payment are United States currency, check, money order, cashier's check, credit card, electronic funds transfer, and debit to a prepaid customer account established with the Secretary of State.
- (d) Search Request with Filing. If a filer requests a search at the time a UCC record is filed, the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Sections 9523 and 9525, Commercial Code.

#### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22601.4. Rules Applied to Search Requests.

Search results are produced by the application of standardized search logic to the name presented to the Secretary of State's office. Human judgment does not play a role in determining the results of the search. The following apply to searches:

- (a) There is no limit to the number of matches that may be returned in response to the search criteria.
  - (b) No distinction is made between upper and lower case letters.
  - (c) Punctuation marks and accents are disregarded.
- (d) Words and abbreviations at the end of a name that indicate the existence or nature of an organization are disregarded.
- (e) The word "the" at the beginning of the search criteria is disregarded.
  - (f) All spaces are disregarded.
- (g) For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and first name and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or the initial J as the first name, "Smith" as the last name and with any name or initial or no name or initial in the middle name field.
- (h) After using the preceding rules to modify the name to be searched, the search will reveal only names of debtors that are contained in unlapsed and lapsed financing statements and exactly match the names requested, as modified.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9523, Commercial Code.

### HISTORY

1. New section filed 6-21-2004; operative 6-21-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22601.5. Optional Information.

A UCC search request may contain any of the following information.

(a) The request may limit the records searched by using the address of the debtor, the date of filing (or a range of filing dates) or the identity of the secured party(ies) of record on the financing statements. The reports created by the Secretary of State's office in response to a request shall contain the statement:

"The search results herein reflect only the specific information requested. The results of the debtor search will not reflect variances of this name. If the debtor is known under other personal names, trade names, business entities, or addresses, separate searches of these names will have to be requested and conducted. The Secretary of State, his officers and agents disclaim any and all liability for a claim resulting from other fillings on which the name of the debtor can be found in any other form than that which was requested."

- (b) The request may ask for copies of UCC records identified on the search response.
- (c) The request may include instructions on the mode of delivery desired, if other than by ordinary mail, which request will be honored if the requested mode is available to the Secretary of State's office.
- (d) Copies of unrelated records may be requested by providing the specific file numbers. The Secretary of State's office may limit the number of records that may be accepted in a single search request.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Sections 9523 and 9526, Commercial Code.

### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22601.6. Search Responses.

Reports created in response to a search request shall include the following:

- (a) Filing officer. Identification of the Secretary of State and the certification of the Secretary of State required by law.
  - (b) Report Date. The date the report was generated.
  - (c) Name Searched. Identification of the name searched.
- (d) Certification Date. The certification date and time for which the
- (e) Identification of initial financing statements. Identification of each unlapsed and lapsed initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.
- (f) History of Financing Statement. For each initial financing statement on the report, a listing of all related UCC records filed by the Secretary of State's office on or prior to the certification date.
- (g) Copies. Copies of all UCC records revealed by the search and requested by the searcher.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Sections 9523 and 9526, Commercial Code.

#### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### Article 6. Other Notices of Liens

### § 22601.7.

The liens identified in Section 22601.8 are also filed with the Secretary of State pursuant to statutes other than the UCC. The liens are treated by the Secretary of State's office substantially the same as financing statements and are included on search responses pursuant to Commercial Code Section 9528.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9528, Commercial Code.

### **HISTORY**

1. New article 6 (sections 22601.7–22601.8) and section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### § 22601.8. Types of Liens.

- (a) Judgment Liens pursuant to the Code of Civil Procedure Sections 697.510–697.670.
- (b) Attachment Liens pursuant to the Code of Civil Procedure Sections 488.300–488.485 and 488.500–488.510.
- (c) Federal Tax Liens pursuant to the Code of Civil Procedure Sections 2100–2107.
- (d) State Tax Liens pursuant to the Government Code Sections 7170-7174 and 7220-7229.

NOTE: Authority cited: Section 9526, Commercial Code. Reference: Section 9528, Commercial Code.

### HISTORY

1. New section filed 6–21–2004; operative 6–21–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 26).

### Chapter 14. Advance Health Care Directive Registry

### Article 1. Advance Health Care Directive Registry

### § 22610.1. Definitions.

- (a) The following definitions shall apply for purposes of Probate Code sections 4800 and 4801:
- (1) "Health care provider" means an individual licensed, certified, or otherwise authorized or permitted by the law of California or of any other

jurisdiction to provide health care in the ordinary course of business or practice of a profession who is providing health care to the registrant.

- (2) "The public guardian" means a public official of any jurisdiction who is serving in his or her official capacity as the guardian or conservator for the registrant.
- (3) "The legal representative of the registrant" means an individual who is either:
- (A) serving as the guardian or conservator for the registrant pursuant to an order of a court of any jurisdiction; or
- (B) designated in a current written advance health care directive or similar written documents registered with the Secretary of State to make health care decisions for the registrant.
- (b) The following definition shall apply for purposes of Probate Code section 4801:
- (1) "Other authorized persons" means the legal representative of registrants as defined in Section 22610.1(a)(3) of Article 1, Chapter 14, Division 7, Title 2, California Code of Regulations.

NOTE: Authority cited: Sections 4800(a) and 4801, Probate Code. Reference: Sections 4800(a) and (e) and 4801, Probate Code.

#### HISTORY

1. New chapter 14 (article 1, sections 22610.1–22610.4), article 1 (sections 22610.1–22610.4) and section filed 5–17–2006; operative 7–1–2006 (Register 2006, No. 20).

### § 22610.2. Registrations.

- (a) Any registration of a written advance health care directive with the Secretary of State shall be made by using a form prescribed by the Secretary of State. The form shall be available for downloading on the Secretary of State's website at http://www.ss.ca.gov/. All or any part of the form may be completed by the registrant or by another adult in the registrant's presence and at the registrant's direction.
  - (b) A registrant shall provide the following information on the form:
- (1) Whether the form submitted relates to a new registration, an amendment to a prior registration, a revocation of a prior registration or notification regarding an amendment to or revocation of a previously-filed written advance health care directive;
- (2) Whether the written advance health care directive or amendment to a previously-filed written advance health care directive is attached to the form or, in the alternative, whether the form provides notification of the intended place of deposit or safekeeping of a written advance health care directive or amendment to a written advance health care directive;
- (3) The registrant's name, address, date and place of birth, and the name and telephone number of the agent and any alternative agent;
  - (4) At least one of the following:
  - A. The registrant's social security number, or
  - B. The registrant's driver's license number, or
  - C. The registrant's individual identifying number established by law.
- (5) Intended place of deposit or safekeeping of the written advance health care directive or amendment to the written advance health care directive to which the form relates, if applicable;
  - (6) The signature and printed name of the registrant;
  - (7) The date the form is signed by the registrant.
- (c) The registrant shall submit the completed form to the address indicated on the form, along with the required fee, if any.
- (d) The registration form or the material included with the registration card provided pursuant to Probate Code section 4800(d) shall contain the information required to be provided to registrants pursuant to Probate Code section 4802.

NOTE: Authority cited: Sections 4800(a) and 4802, Probate Code. Reference: Sections 4800(c)–(d) and 4802(a)–(c), Probate Code.

### HISTORY

1. New section filed 5-17-2006; operative 7-1-2006 (Register 2006, No. 20).

### § 22610.3. Fees.

- (a) The fee for registering a written advance health care directive with the Secretary of State is \$10.00 for each registration.
- (b) There shall be no fee charged for filing any form amending or revoking a registration or notification that a previously-filed written ad-

vance health care directive or similar document has been amended or revoked.

NOTE: Authority cited: Sections 4800(a) and (f), Probate Code. Reference: Sections 4800(d) and (f) and 4801, Probate Code.

#### HISTORY

1. New section filed 5-17-2006; operative 7-1-2006 (Register 2006, No. 20).

### § 22610.4. Requests for Information.

- (a) All request for information, including requests pursuant to Probate Code section 4717 by an emergency department of a general acute care hospital, shall be in writing and must include all of the following:
  - (1) The name, address and telephone number of the requestor;
- (2) Credible evidence establishing the identity of the requestor. In determining whether the identity of the requestor is established by credible evidence, the Secretary of State may consider requestor's use of business letterhead in making the request, a copy of a driver's license or identification card issued by the California Department of Motor Vehicles, a copy

- of a United States passport, or copies of other credible identification documents:
- (3) A statement by the requestor establishing his or her authority to receive the information requested;
- (4) The identity of the individual for whom the information is requested. In establishing the identity of the individual for whom the information is requested, the Secretary of State may consider the presentation by the requestor of any information contained in or on the filed registration form, including a file number, date of birth, place of birth, social security number, driver's license number or other identifying number; and
- (5) A statement setting forth the reason the information is needed. NOTE: Authority cited: Sections 4800(a) and 4801, Probate Code. Reference: Sections 4800(a)–(c) and 4801, Probate Code.

#### HISTORY

1. New section filed 5-17-2006; operative 7-1-2006 (Register 2006, No. 20).

Barclays Official

### CALIFORNIA CODE OF REGULATIONS

### Title 2. Administration

**Division 8.** Miscellaneous Conflict of Interest Codes

Vol. 3



### **Division 8.** Miscellaneous Conflict of Interest Codes

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Chapter 7.	of Interest Code	Chapter 21.	Commission on State Finance— Conflict of Interest Code
•	Services—Conflict of Interest Code	Chapter 22.	California Conservation Corps— Conflict of Interest Code
Chapter 8.	State Board of Food and Agriculture—Conflict of Interest Code	Chapter 23.	Voting Modernization Board — Conflict of Interest Code
Chapter 9.	California Council on Criminal Justice and the Office of	Chapter 24.	Secretary of State—Conflict of Interest Code
	Criminal Justice Planning— Conflict of Interest Code	Chapter 25.	California Science Center— Conflict of Interest Code
Chapter 10.	California Public Broadcasting Commission—Conflict of Interest Code	Chapter 26.	California Law Revision Commission—Conflict of Interest Code
Chapter 11.	Milton Marks Commission on California State Government Organization and Economy—	Chapter 27.	Native American Heritage Commission—Conflict of Interest Code
Chapter 12.	Conflict of Interest Code	Chapter 28.	California Table Grape Commission—Conflict of Interest Code
	Business Development—Conflict of Interest Code	Chapter 29.	California Exposition and State Fair—Conflict of Interest Code
Chapter 13.	California Library Services Board—Conflict of Interest Code	Chapter 30.	Office of Administrative Law— Conflict of Interest Code

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Chapter 31.	California Pistachio Commission— Conflict of Interest Code	Chapter 48.	California Walnut Commission— Conflict of Interest Code
Chapter 32.	California Kiwi Fruit Commission	Chapter 49.	California Asparagus Commission— Conflict of Interest Code
Chapter 33.	California Avocado Commission— Conflict of Interest Code	Chapter 50.	California Citizens Compensation Commission—Conflict of Interest Code
Chapter 34.	California Iceberg Lettuce Commission—Conflict of Interest Code	Chapter 51.	Lodi-Woodbridge Winegrape Commission—Conflict of Interest Code
Chapter 35.	State Compensation Insurance Fund—Conflict of Interest Code 485	Chapter 52.	University of California Hastings College of the Law— Conflict of Interest Code
Chapter 36.	State Assistance Fund for Enterprise Business and Industrial Developmental Corporation—Conflict of Interest Code	Chapter 53.	State Race Track Leasing Commission—Conflict of Interest Code
Chapter 37.	Department of Personnel Administration—Conflict of	Chapter 54.	Bureau of State Audits—Conflict of Interest Code
Chapter 38.	Interest Code	Chapter 55.	California Managed Risk Medical Insurance Board—Conflict of Interest Code. 488.3
Chapter 39.	Code	Chapter 56.	California Council for Private Postsecondary and Vocational Education—Conflict of Interest Code
Chapter 40.	Employment Training Panel– Conflict of Interest Code 487	Chapter 57.	Del Mar Race Track Authority— Conflict of Interest Code
Chapter 41.	California State Lottery Commission—Conflict of Interest Code	Chapter 58.	Office of Environmental Health Hazard Assessment—Conflict of Interest Code
Chapter 42.	Robert Presley Institute for Corrections Research and Training—Conflict of Interest	Chapter 59.	Department of Toxic Substances Control—Conflict of Interest Code
Chapter 43.	Code	Chapter 60.	Lake County District Two—Local Winegrape Commission—Conflict of Interest Code
	Corrections Reception Center in Los Angeles County—Conflict of Interest Code	Chapter 61.	California Pepper Commission— Conflict of Interest Code
Chapter 45.	California State World Trade Commission—Conflict of Interest Code	Chapter 62.	California Mental Health Planning Council—Conflict of Interest Code
Chapter 46.	California Uniform Construction Cost Accounting Commission—	Chapter 63.	Delta Protection Commission— Conflict of Interest Code
Chapter 47.	Conflict of Interest Code	Chapter 64.	California State Library— Conflict of Interest Code
•	for the Arts—Conflict of Interest Code	Chapter 65.	San Joaquin River Conservancy— Conflict of Interest Code

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Chapter 66.	Intercity High Speed Rail Commission—Conflict of Interest Code	Chapter 83.	California State University Risk Management Authority—Conflict of Interest Code	488.11
Chapter 67.	California Housing Partnership Corporation—Conflict of Interest Code	Chapter 84.	California Gold Discovery to Sesquicentennial Commission— Conflict of Interest Code	488.11
Chapter 68.	Southwestern Low–Level Radioactive Waste Commission— Conflict of Interest Code	Chapter 85.	California High Speed Rail Authority—Conflict of Interest Code	488.11
Chapter 69.	California Constitution Revision Commission—Conflict of Interest	Chapter 86.	State Independent Living Council—Conflict of Interest Code	488.12
Chapter 70.	Code	Chapter 88.	California State University, Channel Islands Site Authority— Conflict of Interest Code	488.12
Chapter 71.	California Service Corps— Conflict of Interest Code	Chapter 89.	California Date Commission— Conflict of Interest Code	488.12
Chapter 72.	California Strawberry Commission—	Chapter 90.	California Rice Commission — Conflict of Interest Code	488.13
Chapter 73.	Conflict of Interest Code	Chapter 91.	California Children and Families Commission—Conflict of Interest Code	488.13
Chapter 74.	Department of Information Technology—Conflict of Interest Code	Chapter 92.	California Travel and Tourism Commission — Conflict of Interest Code	488.13
Chapter 75.	Child Development Advisory Programs Committee—Conflict of	Chapter 93.	Office of Traffic Safety— Conflict of Interest Code	488.13
Chapter 76.	Interest Code	Chapter 94.	Office of the State Governor— Conflict of Interest Code	488.14
Chapter 70.	of Academic Content and Performance Standards—Conflict of Interest Code	Chapter 95.	California Gambling Control Commission — Conflict of Interest Code	488.14
Chapter 77.	California Tomato Commission— Conflict of Interest Code	Chapter 96.	California Sheep Commission— Conflict of Interest Code	488.14
Chapter 78.	California Cut Flower Commission— Conflict of Interest Code	Chapter 97.	California Workforce Investment Board — Conflict of Interest Code	488.14
Chapter 79.	California Earthquake Authority— Conflict of Interest Code	Chapter 98.	California Electricity Oversight Board — Conflict of Interest	
Chapter 80.	California Grape Rootstock Improvement Commission—Conflict of Interest Code	Chapter 99.	Code	488.15
Chapter 81.	California Apple Commission— Conflict of Interest Code	CI . 101	Development Agency — Conflict of Interest Code	488.15
Chapter 82.	California Forest Products	Chapter 101.	Baldwin Hills Conservancy — Conflict of Interest Code	488.15
	Commission—Conflict of Interest Code	Chapter 102.	Office of the Inspector General— Conflict of Interest Code	488.15

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Chapter 103.	California Climate Action Registry — Conflict of Interest Code	488.16	Chapter 112.	Sonoma County Winegrape Commission — Conflict of Interest Code	488.17
Chapter 105.	California Bay Delta Authority — Conflict of Interest Code	488.16	Chapter 113.	Mendocino Winegrape and Wine	
Chapter 106.	California Consumer Power and Conservation Financing			Commission — Conflict of Interest Code	488.18
	Authority — Conflict of Interest Code	488.16	Chapter 114.	Ocean Protection Council — Conflict of Interest Code	488.18
Chapter 107.	California Commission for Economic Development — Conflict of Interest Code	488.16	Chapter 117.	California African American	
Chapter 108.	Santa Monica Bay Restoration Commission — Conflict of			Museum — Conflict of Interest Code	488.18
	Interest Code	488.17	Chapter 118.	Citizens Financial	
Chapter 111.	California Cultural and		· ·	Accountability Oversight	
	Historical Endowment — Conflict			Committee — Conflict of	
	of Interest Code	488.17		Interest Code	488.18

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### Division 8. Miscellaneous Conflict of Interest Codes

### Chapter 1. Office of the Lieutenant Governor—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

OFFICE OF THE LIEUTENANT GOVERNOR STATE CAPITOL. ROOM 1028
SACRAMENTO, CALIFORNIA 95814
FAIR POLITICAL PRACTICES COMMISSION 428 J STREET. SUITE 800
SACRAMENTO, CALIFORNIA 95814
SECRETARY OF STATE STATE
ARCHIVES
1020 "O" STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 1, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 1. Office of the Lieutenant Governor— Conflict of Interest Code

Section 22999.

General Provisions Appendix

### HISTORY

- 1. New division 8, chapter 1 (sections 22100–22900, not consecutive) filed 4–1477; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3–15–77 (Register 77, No. 16).
- Repealer of chapter 1 (articles 1–8, sections 22100–22900, not consecutive) and new chapter 1 (section 22100 and Appendix) filed 3–18–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 12).
- Amendment filed 7-23-92; operative 8-24-92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 5-27-92 (Register 92, No. 30).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Editorial correction renumbering former section 22100 to section 22999 (Register 2003, No. 47).

### Chapter 2. Legislative Counsel Bureau—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

LEGISLATIVE COUNSEL BUREAU
925 L STREET
SACRAMENTO, CA 95814
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 2, Division 8 of Title 2 of the California Code of Regulations, and consists of Sections numbered and titled as follows:

### Chapter 2. Legislative Counsel Bureau— Conflict of Interest Code

Section

23000. General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code; Section 87300 et seq., Government Code. Reference: Sections 87300, et seq., Government Code.

#### HISTORY

- 1. New Chapter 2 (Articles 1–7; Sections 23000–23060, not consecutive) filed 2–20–79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–5–78 (Register 79, No. 7).
- 2. Repealer of Chapter 2 (Articles 1–7, Sections 23000–23060, not consecutive) and new Chapter 2 (Section 23000 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 3. Traffic Adjudication Board—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

TRAFFIC ADJUDICATION BOARD
2716A "V" STREET
SACRAMENTO, CA 95818
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 3, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 3. Traffic Adjudication Board—Conflict of Interest Code

Section

24000.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

### HISTORY

- 1. New Chapter 3 (Sections 24000–24008, Appendices A and B) filed 3–20–80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3–3–80 (Register 80, No. 12). For history of former Chapter 3, see Registers 78, No. 10, and 77, No. 35.
- 2. Repealer of Chapter 3 (Sections 24000–24008 and Appendices A and B) and new Chapter 3 (Section 24000 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 4. State and Consumer Services Agency—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

STATE AND CONSUMER SERVICES AGENCY 1220 N STREET, ROOM 409 SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 4, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 4. State and Consumer Services Agency— Conflict of Interest Code

Section

25001. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

HISTORY

- New chapter 4 (sections 25001–25015) filed 5–13–77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–16–76 (Register 77, No. 20).
- Repealer of chapter 4 (sections 25001–25015) and new chapter 4 (section 25001 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- 3. Amendment filed 4–6–87; operative 5–6–87. Approved by Fair Political Practices Commission 3–9–87 (Register 87, No. 16).
- 4. Amendment of section 25001 filed 7–19–91; operative 7–19–91. (Register 91, No. 50).
- Amendment of section 25001 and Appendix filed 1–15–93. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–23–92 (Register 93, No. 3).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 7. Amendment of Appendix filed 2–20–2004; operative 3–21–2004. Approved by Fair Political Practices Commission 12–18–2003 (Register 2004, No. 8).
- Amendment of section and Appendix filed 6–16–2005; operative 7–16–2005.
   Approved by Fair Political Practices Commission 5–5–2005 (Register 2005, No. 24).

# Chapter 5. California State Council on Vocational Education— Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA ADVISORY COUNCIL ON VOCATIONAL EDUCATION 708 10TH STREET, SUITE 260 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 5, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 5. California State Council on Vocational Education— Conflict of Interest Code

Section

26000. General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

#### HISTORY

- 1. New Chapter 5 (Sections 26000–26006) filed 3–31–78; effective thirtieth day thereafter. Approved by the Fair Political Practices Commission 6–8–77 (Register 78, No. 13).
- 2. Repealer of Chapter 5 (Sections 26000–26006) and new Chapter 5 (Section 26000 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- 3. Amendment of Section 26000 and Appendix filed 9–30–88; operative 10–30–88. Approved by Fair Political Practices Commission 7–21–88 (Register 88, No. 41).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 5.1. California Postsecondary Education Commission— Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA POSTSECONDARY EDUCATION COMMISSION 1020 12TH STREET SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 5.1, division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 5.1. California Postsecondary Education Commission— Conflict of Interest Code

Section

26100. General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

### HISTORY

- 1. New chapter 5 (sections 26100–26908, not consecutive) filed 4–11–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 11–1–77 (Register 78, No. 15).
- Editorial redesignation to chapter 5.1 (sections 26100–26908, not consecutive) (Register 78, No. 15).
- Repealer of chapter 5.1 (sections 26100–26908 and Exhibit A and B) and new chapter 5.1 (section 26100 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81 No. 9)
- Amendment of section filed 10-8-91; operative 11-7-91. Approved by Fair Political Practices Commission 9-4-91 (Register 92, No. 6).
- Amendment of section and Appendices filed 11–30–95; operative 12–30–95.
   Submitted to OAL for printing only. Approved by Fair Political Practices Commission 9–25–95 (Register 95, No. 48).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 6. California Arts Council—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

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Register 2005, No. 35; 9-2-2005

CALIFORNIA ARTS COUNCIL 2022 'J' STREET SACRAMENTO, CA 95814

SECRETARY OF STATE (ARCHIVES) 1020 'O' STREET SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO. CA 95814

The conflict of interest code is designated as chapter 6, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 6. California Arts Council— Conflict of Interest Code

Section

27000. General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

#### HISTORY

- Redesignation and amendment of title 2, division 3, chapter 2, subchapter 1 (sections 3500–3517 and Exhibit A) to title 2, division 8, chapter 6 (sections 27000–27017, Exhibits A and B) filed 3–6–80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–8–77 (Register 80, No. 10).
- 2. Repealer of chapter 6 (sections 27000–27017) and new chapter 6 (section 27000 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- Amendment of Appendix filed 10–16–86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 9–9–86 (Register 86, No. 42)
- 4. New Appendix B filed 3–21–94; operative 4–20–94. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 1–18–94 (Register 94, No. 12).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of general provisions and appendices A and B filed 8-29-2005; operative 9-28-2005. Approved by Fair Political Practices Commission 7-11-2005 (Register 2005, No. 35).

### Chapter 7. Department of Technology Services—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

DEPARTMENT OF TECHNOLOGY SERVICES P.O. BOX 1810

RANCHO CORDOVA, CA 95741-1810

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800

SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 7, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 7. Department of Technology Services— Conflict of Interest Code

Section

28010. General Provisions Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

#### HISTORY

- 1. New Chapter 7 (Sections 28010–28120) filed 3–31–78; effective thirtieth day thereafter. Approved by the Fair Political Practices Commission 10–4–77 (Register 78, No. 13).
- 2. Amendment of Section 28120 filed 7–7–78 as procedural and organizational; effective upon filing (Register 78, No. 27).
- 3. Repealer of Chapter 7 (Sections 28010–28120) and new Chapter 7 (Section 28010 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- 4. Amendment of Appendix filed 7–25–95; operative 8–24–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 5–31–95 (Register 95, No. 30).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 6. Amendment of Appendix filed 2–27–2003; operative 3–29–2003. Approved by Fair Political Practices Commission 1–3–2003 (Register 2003, No. 9).
- 7. Repealer and new chapter heading and amendment of general provisions and appendix filed 4–4–2007; operative 5–4–2007. Approved by Fair Political Practices Commission 1–26–2007 (Register 2007, No. 14).

### Chapter 8. State Board of Food and Agriculture—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

STATE BOARD OF FOOD AND AGRICULTURE
1220 N STREET, ROOM 100
SACRAMENTO, CALIFORNIA 95814
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814
SECRETARY OF STATE
STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 8, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 8. State Board of Food and Agriculture— Conflict of Interest Code

Section

29000.

General Provisions Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

### HISTORY

- New Chapter 8 (Sections 29000–29007, not consecutive) filed 7–19–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–7–78 (Register 78, No. 29).
- Repealer of Chapter 8 (Sections 29000–29007) and new Chapter 8 (Section 29000 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of section and appendix filed 11–19–97; operative 12–19–97. Approved by Fair Political Practices Commission 10–24–97 (Register 97, No. 47).

# Chapter 9. California Council on Criminal Justice and the Office of Criminal Justice Planning—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

OFFICE OF CRIMINAL JUSTICE PLANNING 1130 K STREET, SUITE 300 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 L STREET SHITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 9, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 9. California Council on Criminal Justice and the Office of Criminal Justice Planning-Conflict of Interest Code

Section

30000. General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

#### HISTORY

- 1. New chapter 9 (sections 30000-30010) filed 4-10-78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 9–8–77 (Register 78, No. 15).
- 2. Repealer of chapter 9 (sections 30000-30010 and Appendices A-C) and new chapter 9 (section 30000 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81. No. 9).
- 3. Amendment of Appendix filed 5-28-86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 4–8–86 (Register 86, No. 22).
- 4. Amendment filed 1-16-92; operative 2-17-92. Approved by Fair Political Practices Commission 11–12–91 and submitted for print only (Register 92, No.
- 5. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30)
- 6. Amendment of agency address and amendment of General Provisions and Appendix filed 4–24–2001; operative 5–24–2001. Approved by Fair Political Practices Commission 2–28–2001 (Register 2001, No. 17).

### Chapter 10. California Public Broadcasting Commission—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

> CALIFORNIA PUBLIC BROADCASTING COMMISSION 921 11TH STREET, SUITE 1200 SACRAMENTO, CALIFORNIA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CALIFORNIA 95814

ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO. CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 10, Division 8, of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 10. California Public Broadcasting Commission— Conflict of Interest Code

Section

31000. General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

### HISTORY

- 1. New Chapter 10 (Sections 31000–31008) filed 4–18–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 10-4-77 (Register 78, No. 15)
- 2. Repealer of Chapter 10 (Sections 31000-31008 and Exhibits A and B) and new Chapter 10 (Section 31000 and Appendix) filed 3–18–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register
- 3. Repealer of Appendix and new Appendix filed 7-22-83; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-6-83 (Register 83, No. 30).
- 4. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 11. Milton Marks Commission on California State Government Organization and Economy—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

> MILTON MARKS COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY 11TH AND L BUILDING. SUITE 550 SACRAMENTO, CALIFORNIA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CALIFORNIA 95814

SECRETARY OF STATE ARCHIVES 1020 "O" STREET SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 11, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 11. Milton Marks Commission on California State

Government

Organization and Economy— Conflict of Interest Code

Section

32001.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

### HISTORY

- 1. New Chapter 11 (Sections 32001-32009, Exhibit A) filed 7-20-78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–7–78 (Register 78, No. 29).
- 2. Repealer of Chapter 11 (Sections 32001-32009 and Exhibit A) and new Chapter 11 (Section 32001 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81,
- 3. Amendment of chapter 11 heading, section and Appendix filed 6-26-95; operative 7-26-95. Submitted to OAL for printing only pursuant to Government Code section 11346.2. Approved by Fair Political Practices Commission -1-95 (Register 95, No. 26).
- 4. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 12. Department of Economic and **Business Development—Conflict of Interest** Code

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

### HISTORY

- 1. New chapter 12 (sections 33000-33030, not consecutive; Appendices A and B) filed 3-8-79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1-3-79 (Register 79, No. 10).

  2. Repealer of chapter 12 (sections 33000–33030, not consecutive and Appendices
- A and B) and new chapter 12 (section 33000 and Appendix) filed 2–26–81; ef-

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fective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9)

3. Repealer of section and Appendix filed 5–4–92; operative 6–3–92. Approved by Fair Political Practices Commission 3–9–92 (Register 92, No. 20).

### Chapter 13. California Library Services **Board—Conflict of Interest Code**

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

> CALIFORNIA LIBRARY SERVICES BOARD OFFICE CALIFORNIA STATE LIBRARY 9TH & CAPITOL MALL SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 13, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titles as follows:

### Chapter 13. Conflict of Interest Code

Section

34000.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

### HISTORY

- 1. New chapter 13 (sections 34000-34009) filed 5-15-80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3-30-80 (Register 80, No. 20).
- 2. Repealer of chapter 13 (sections 34000-34009) and new chapter 13 (section 34000 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- 3. Amendment of section 34000 filed 8–8–91; operative 9–9–91 (Register 91, No.
- 4. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 14. Office of Statewide Health Planning and Development Administration—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at the following locations:

> OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT 714 P STREET SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 14, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 14. Office of Statewide Health Planning and Development Administration—

Conflict of Interest Code

Section

35101.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

#### HISTORY

- New Chapter 12 (Article 2, Sections 99101–99116, not consecutive) filed 3–5–79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1–17–79 (Register 79, No. 10).
   Editorial redesignation of Title 22, Division 7, Chapter 12 (Sections 90101, 100116), P. Title 2, Division 7, Chapter 14 (Sections 25101, 25116) (Page 14).
- 99101-99116) to Title 2, Division 8, Chapter 14 (Sections 35101-35116) (Register 79, No. 46).
- 3. Repealer of Chapter 14 (Article 2, Sections 35101–35116 and Appendices A and B) and new Chapter 14 (Section 35101) and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- Amendment of Appendix filed 7–30–86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–10–86 (Register 86, No. 31).
   Amendment of Appendix filed 4–12–96; operative 5–12–96. Approved by Fair Political Practices Commission 2–28–96 (Register 96, No. 15).
   Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 20).
- ister 96, No. 30)
- Amendment of Appendix filed 9-23-98; operative 10-23-98. Approved by Fair Political Practices Commission 7-28-98. Submitted to OAL for printing only (Register 98, No. 39).

### Chapter 15. Health and Welfare Agency **Data Center—Conflict of Interest Code**

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

- 1. New chapter 15 (sections 36000-36010) filed 2-8-80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6-5-79 (Register 80. No. 6).
- 2. Repealer of chapter 15 (sections 36000-36010) and new chapter 15 (section 36000 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
- 3. Amendment filed 12-26-91; operative 1-27-92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–14–91 (Register 92, No. 12)
- ${\it 4. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30)}.$
- 5. Amendment of general provisions and appendix filed 9-21-98; operative 10-21-98. Approved by Fair Political Practices Commission 7-28-98. Submitted to OAL for printing only (Register 98, No. 39).
- 6. Repealer filed 4-4-2007; operative 5-4-2007. Approved by Fair Political Practices Commission 1-26-2007 (Register 2007, No. 14).

### Chapter 16. Department of Finance—Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> DEPARTMENT OF FINANCE 1025 P STREET, ROOM 374 SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95815 ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 16, division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 16. Department of Finance—Conflict of Interest Code

Section

37000. General Provisions.

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302 and 87306, Government Code.

#### HISTORY

- Editorial redesignation and amendment of title 2, division 2, chapter 2.5 (sections 1181–1191, Appendices A–D) to title 2, division 8, chapter 16, (sections 1180–1191, Appendices A and B) filed 4–24–80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1–7–80 (Register 80, No.17).
- Repealer of chapter 16 (sections 1180–1191) and new chapter (section 37000 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
- Amendments of Appendix filed 4–2–86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3–4–86 (Register 86, No. 14).
- Amendment of Appendix filed 5-1-90; operative 6-2-90. Approved by Fair Political Practices Commission 4-10-90 (Register 90, No. 22).
   Amendment filed 1-22-92; operative 2-21-92. Approved by Fair Political
- 5. Amendment filed 1–22–92; operative 2–21–92. Approved by Fair Political Practices Commission 12–17–91 and submitted for print only (Register 92, No. 12).
- Amendment filed 2–16–95; operative 3–20–95. Approved by Fair Political Practices Commission 1–4–95 and submitted for print only (Register 95, No. 7).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of General Provisions and Appendix filed 7–14–99; operative 8–13–99. Approved by Fair Political Practices Commission 5–20–99 (Register 99, No. 29).
- Amendment of Appendix filed 9–10–2001; operative 10–10–2001. Approved by Fair Political Practices Commission 7–17–2001 (Register 2001, No. 37).
   Amendment of Appendix filed 9–12–2003; operative 10–12–2003. Approved by Fair Political Practices Commission 7–21–2003 (Register 2003, No. 37).
- 11. Amendment of section and Appendix filed 9-13-2005; operative 10-13-2005. Approved by Fair Political Practices Commission 7-5-2005 (Register 2005, No. 37).

### Chapter 17. State Public Defender—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

OFFICE OF THE STATE PUBLIC DEFENDER
455 CAPITOL MALL, SUITE 335
SACRAMENTO, CA 95814
FAIR DOLUTICAL PRACTICES COMMISSION

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814 SECRETARY OF STATE

SECRETART OF STATE
STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 17, Division 8, of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 17. State Public Defender—Conflict of Interest Code

Section

38000. Code Adoption

38000.5. Designated Employees Disclosure Categories

NOTE: Authority and reference cited: Section 87300, et seq., Government Code.

HISTORY

- 1. Repealer and new chapter 17 (sections 38000–38000.10) filed 12–1–94; operative 1–2–95 (Register 94, No. 48). Submitted to OAL for printing only. Approved by Fair Political Practices Commission 10–19–94. For prior history, see Register 81, No. 3.
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 18. California Transportation Commission

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA TRANSPORTATION COMMISSION 1120 N STREET. ROOM 1422 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

SECRETARY OF STATE STATE ARCHIVES 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 18, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 18. California Transportation Commission— Conflict of Interest Code

Section

39000. Code Adoption39001. Designated Employees39002. Designated Categories

NOTE: Authority cited: Section 87300, et seq., Sections 14500–14537, Part 5.3, Division 3 of Title 2, Government Code. Reference: Section 11409(a), Government Code.

### HISTORY

- New Chapter 18 (Sections 39000–39002) filed 6–18–80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5–12–80 (Register 80, No. 25).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 19. Seismic Safety Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at the following locations:

SEISMIC SAFETY COMMISSION 1900 K STREET, SUITE 100 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

SECRETARY OF STATE STATE ARCHIVES 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 19, Division 8, of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 19. Seismic Safety Commission—Conflict of Interest Code

Section

40000. Adoption

40001. Designated Employees 40002. Disclosure Categories

NOTE: Authority and reference cited: Section 87300, et seq., Government Code.

HISTORY

- 1. New Chapter 19 (Sections 40000–40002) filed 1–7–81; effective thirtieth day thereafter. Approved by Fair Political Parties Commission 5–12–80 (Register 81, No. 2).
- Amendment of sections 40000–40002 and Appendices A and B filed 12–29–94; operative 1–30–95. Approved by Fair Political Practices Commission 10–31–94 (Register 94, No. 52).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 20. State Council on Developmental Disabilities—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

STATE COUNCIL OF DEVELOPMENTAL DISABILITIES 2000 O STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CALIFORNIA 95814

ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as chapter 20, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 20. Council on Developmental Disabilities— Conflict of Interest Code

Section

41000. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 20 (sections 41000–41002) filed 9–2–80 as procedural and organizational; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5–12–80 (Register 80, No. 35).
- Change without regulatory effect amending section filed 10–28–91 pursuant to section 100, title 1, California Code of Regulations and submitted to OAL for printing only (Register 92, No. 6).
- 3. New sections filed 9–1–92; operative 10–1–92. Approved by Fair Political Practices Commission 7–31–92 (Register 92, No. 36).
- New sections 41001, 41002 and 41003 filed 9–10–92; operative 10–12–92. Approved by Fair Political Practices Commission 7–31–92 (Register 92, No. 38).
- 5. New section 41011 filed 9–10–92; operative 10–12–92. Approved by Fair Political Practices Commission 7–31–92 (Register 92, No. 38).
- 6. New section 41004 filed 9–15–92; operative 10–15–92. Approved by Fair Political Practices Commission 7–31–92 (Register 92, No. 38).
- 7. New sections 41010 and 41013 filed 9–16–92; operative 10–16–92. Approved by Fair Political Practices Commission 7–31–92 (Register 92, No. 38).
- 8. New section 41012 filed 9–17–92; operative 10–19–92. Approved by Fair Political Practices Commission 7–31–92 (Register 92, No. 38).
- 9. Section 41009 filed 10–1–92; operative 11–2–92. Approved by Fair Political Practices Commission 7–31–92 (Register 92, No. 40).

- Amendment of general provisions and appendix for section 41000 filed 8-13-2003; operative 9-12-2003. Approved by Fair Political Practices Commission 6-13-2003 (Register 2003, No. 33).
- 11. Repealer of sections 41001–41013, inclusive and appendices filed 12–29–2003; operative 1–28–2004. Approved by Fair Political Practices Commission 11–13–2003 (Register 2004, No. 1).

### Chapter 21. Commission on State Finance—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

COMMISSION ON STATE FINANCE 1400 KAY STREET, SUITE 205 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 21, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 21. Commission On State Finance— Conflict of Interest Code

Section

42000

General Provisions

Appendix

NOTE: Authority and reference cited: Section 81000, Government Code.

### HISTORY

- New Chapter 21 (Section 42000 and Appendix) filed 9-17-80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6-30-80 (Register 80, No. 38).
- Amendment of Appendix filed 8–29–85; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 7–12–85 (Register 85, No. 35).
- Amendment of Appendix filed 7–16–91; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–20–91 (Register 91, No. 45).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 22. California Conservation Corps—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA CONSERVATION CORPS 1530 CAPITOL AVENUE SACRAMENTO, CA 958L4

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 22, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

### Chapter 22. California Conservation Corps—Conflict of Interest Code

Section	
43000.	Introduction
43001.	Definition of Terms
43002.	Designated Employees
43003.	Disclosure Statements
43004.	Place of Filing
43005.	Time of Filing
43006.	Contents of Statements
43007.	Manner of Reporting
43008.	Disqualification
43009.	Manner of Disqualification
	Appendix

NOTE: Authority and reference cited: Section 87311, Government Code.

### HISTORY

- 1. New chapter 22 (sections 43000–43009) filed 8–28–80; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5–12–80 (Register 80, No. 35).
- Amendment of sections 43002 and 43003 filed 4-12-90; operative 5-12-90.
   Approved by Fair Political Practices Commission 2-15-90 (Register 90, No. 18).
- 3. Amendment filed 8–8–95; operative 9–7–95. Approved by Fair Political Practices Commission 6–9–95 (Register 95, No. 32).
- 4. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of sections 43002 and 43003 filed 10–8–99; operative 11–7–99.
   Approved by Fair Political Practices Commission 8–9–99 (Register 99, No. 41).
- Amendment of general provisions and Appendix filed 5–6–2008; operative 6–5–2008. Approved by Fair Political Practices Commission 4–9–2008 (Register 2008, No. 19).

### Chapter 23. Voting Modernization Board — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

VOTING MODERNIZATION BOARD C/O ELECTIONS DIVISION, SECRETARY OF STATE'S OFFICE 1500 11TH STREET, 5TH FLOOR SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 23, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 23. Voting Modernization Board — Conflict of Interest Code

Section

44000. General Provisions

Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

1. New chapter 23 (section 44000 and Appendices A and B) filed 7-27-2005; operative 8-26-2005. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 5-2-2005 (Register 2005, No. 30).

### Chapter 24. Secretary of State—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

SECRETARY OF STATE
1230 J STREET, SUITE 218
SACRAMENTO, CA 95814
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 "0" STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 24, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 24. Secretary of State— Conflict of Interest Code

Sections 45100.

45127. General Provisions 45128. Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302, and 87306 Government Code.

### HISTORY

- 1. New chapter 2 (sections 20100–20128) filed 12–3–76; designated effective 1–1–77. Approved by Fair Political Practices Commission 10–19–76 (Register 76, No. 49).
- Editorial renumbering of title 2, division 7, chapter 2 (sections 20100–20128) to title 2, division 8, chapter 24 (sections 45100–45128) (Register 80, No. 38).
- 3. Editorial correction of HISTORY 2. (Register 80, No. 41).
- Repealer of chapter 24 (sections 45100–45128) and new chapter 24 (section 45100 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1–12–81 (Register 81, No. 9).
- Amendment filed 12–19–91; operative 1–20–92. Approved by Fair Political Practices Commission 10–18–91 and submitted for print only (Register 92, No. 12).
- 6. Amendment filed 8–9–93; operative 8–9–93. Approved by Fair Political Practices Commission 6–18–93 (Register 93, No. 33).
- 7. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 8. Amendment of appendices A and B filed 2–23–99; operative 3–25–99. Approved by Fair Political Practices Commission 1–7–99 (Register 99, No. 9).
- Amendment of appendices A and B filed 12–20–2001; operative 1–19–2002. Approved by Fair Political Practices Commission 10–15–2001 (Register 2001, No. 51).
- Amendment of appendices A and B filed 2–26–2004; operative 3–27–2004.
   Approved by Fair Political Practices Commission 12–18–2003 (Register 2004, No. 9)

### Chapter 25. California Science Center—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA SCIENCE CENTER 700 STATE DRIVE LOS ANGELES, CA 90037 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET. SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 25, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 25. California Science Center— Conflict of Interest Code

Section

46000. 46001.

Introduction Appendix

NOTE: Authority and reference cited: Section 87300, Government Code.

### HISTORY

New chapter 25 (Sections 46000–46001) filed 12–12–80 as procedural and organizational; effective upon filing. Approved by Fair Political Practices Commission 5–12–80 (Register 80, No. 50).

- 2. Amendment of chapter 25 (sections 46000–46001) filed 9–8–95; operative 10–8–95. Approved by Fair Political Practices Commission 6–15–95 (Register 95, No. 36)
- 3. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 4. Amendment of chapter 25 (sections 46000–46001) filed 4–13–98; operative 5–13–98. Approved by Fair Political Practices Commission 2–19–98 (Register 98, No. 16).

### Chapter 26. California Law Revision Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11409(a), that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA LAW REVISION COMMISSION 4000 MIDDLEFIELD ROAD, ROOM D-2 PALO ALTO, CALIFORNIA 94306 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO. CA 95814

[The next page is 483.]

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 26, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

### Chapter 26. California Law Revision Commission— Conflict of Interest Code

Section

47000. Introduction

47001. App 47002. App

Appendix—Designated Employees Appendix—Disclosure Categories

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87312, Government Code.

#### HISTORY

- New chapter 26 (sections 47000–47002) filed 1–27–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 11–3–80 (Register 81, No. 5).
- Amendment of sections 47000 and 47001 filed 4–21–82; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3–1–82 (Register 82, No. 17).
- Amendment of sections 47000 and 47002 filed 3-22-94; operative 4-21-94.
   Submitted to OAL for printing only. Approved by Fair Political Practices Commission 12-14-93 (Register 94, No. 12).
- 4. Editorial correction of section 47002 heading (Register 94, No. 12).
- 5. Amendment of Appendix filed 4-22-96; operative 5-22-96. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 2-20-96 (Register 96, No. 17).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 7. Amendment of sections 47001 and 47002 filed 2-27-2001; operative 2-27-2001. Approved by Fair Political Practices Commission 2-13-2001 (Register 2001, No. 9).

### Chapter 27. Native American Heritage Commission—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

NATIVE AMERICAN HERITAGE COMMISSION 1400 TENTH STREET SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 27, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 27. Native American Heritage Commission— Conflict of Interest Code

Section

48000.

General Provisions Appendix

NOTE: Authority and reference cited: Section 87300, Government Code.

HISTORY

New chapter 27 (section 48000 and Appendix) filed 10–21–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 8–31–81 (Register 81, No. 43).

- Amendment filed 1-6-92; operative 2-5-92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 1-6-91 (Register 92, No. 12).
- 3. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 4. Amendment of general provisions, section and Appendix filed 5–17–2004; operative 6–16–2004. Approved by Fair Political Practices Commission 3–10–2004 (Register 2004, No. 21).

### Chapter 28. California Table Grape Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 28, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 28. California Table Grape Commission— Conflict of Interest Code

Section

49000. General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference; Section 87300, *et seq.*, Government Code.

### HISTORY

- 1. New Chapter 28 (Sections 49000 and Appendix) filed 6–12–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–3–80 (Register 81, No. 24).
- Amendment of Appendix filed 10-29-82; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 8-30-82 (Register 82, No. 44).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 29. California Exposition and State Fair—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA EXPOSITION AND STATE FAIR 1600 EXPOSITION BOULEVARD SACRAMENTO, CA 95815

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 29, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 29. California Exposition And State Fair— Conflict of Interest Code

Section 50000.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

#### HISTORY

- 1. New Chapter 29 (Section 50000 and Appendix) filed 11–12–81 as procedural and organizational; designated effective 1–2–82. Approved by Fair Political Practices Commission 10–5–81 (Register 81, No. 46).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of Appendix A and redesignation and amendment of disclosure categories as new Appendix B filed 11–30–2004; operative 12–30–2004. Approved by Fair Political Practices Commission 9–22–2004 (Register 2004, No. 49).

### Chapter 30. Office of Administrative Law—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

OFFICE OF ADMINISTRATIVE LAW 300 CAPITOL MALL, SUITE 1250 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 30, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 30. Office of Administrative Law— Conflict of Interest Code

Section

51000. General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 30 (section 51000 and Appendix) filed 8–21–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6–1–81 (Register 81, No. 34).
- Amendment of General Provisions, Appendix and Note filed 2-1-94; operative 3-2-94. Submitted for printing only. Approved by Fair Political Practices Commission 1-26-94 (Register 94, No. 5).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 4. Amendment filed 10–31–2002; operative 11–30–2002. Approved by Fair Political Practices Commission 10–11–2002 (Register 2002, No. 44).
- Amendment of section and Appendix filed 8-15-2005; operative 9-14-2005.
   Approved by Fair Political Practices Commission 7-13-2005 (Register 2005, No. 33).

### Chapter 31. California Pistachio Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict

of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA PISTACHIO COMMISSION
5118 E. CLINTON. SUITE 109
FRESNO, CA 93727
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 31, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 31. California Pistachio Commission— Conflict of Interest Code

Section

52000. General Provisions

Appendix

NOTE: Authority cited: Sections 87300–87313, Government Code. Reference: Sections 81000, et seq., Government Code.

HISTORY

- 1. New Chapter 31 (Section 52000 and Appendix) filed 5-25-82; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-4-82 (Register 82, No. 22).
- Amendment filed 1–15–92; operative 2–14–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–14–91 (Register 92, No. 12).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 32. California Kiwi Fruit Commission

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. These regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA KIWI FRUIT COMMISSION 1540 RIVER PARK DRIVE. SUITE 120 SACRAMENTO, CA 95815 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 32, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 32. California Kiwi Fruit Commission— Conflict of Interest Code

Section

52100. General Provisions Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 81000 et seq., Government Code.

### HISTORY

- 1. New chapter 32 (section 52100 and Appendix) filed 4–8–82; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2–1–82 (Register 82, No. 15).
- Amendment filed 1–14–92; operative 2–13–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–14–91 (Register 92, No. 12).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 33. California Avocado Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

> CALIFORNIA AVOCADO COMMISSION 17620 FITCH. 2ND FLOOR IRVINE, CA 92714

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 33, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

> Chapter 33. California Avocado Commission— Conflict of Interest Code

Section

52200.

General Provisions Appendix

NOTE: Authority cited: Sections 87300-87313, Government Code. Reference: Sections 81000, et seq., Government Code.

- 1. New chapter 33 (section 52200 and Appendix) filed 4-22-82; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2-1-82 (Register 82, No. 17)
- 2. Amendment filed 1-16-92; operative 2-17-92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–14–91 (Register 92,
- 3. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 34. California Iceberg Lettuce Commission—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

> CALIFORNIA ICEBERG LETTUCE COMMISSION 23845 W. R. HOLMAN HIGHWAY MONTEREY, CA 93940

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 34, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 34. California Iceberg Lettuce Commission— Conflict of Interest Code

Section

52300

General Provisions Appendix

NOTE: Authority and reference cited: Section 81000, et seq., Government Code. HISTORY

- 1. New chapter 34 (section 52300 and Appendix) filed 6-8-82; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2-1-82 (Register 82, No. 24)
- Amendment filed 11–1–91; operative 12–2–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 92, No. 8).
   Editorial correction of address for the Fair Political Practices Commission (Reg-
- ister 96, No. 30).

### Chapter 35. State Compensation Insurance Fund—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

> STATE COMPENSATION INSURANCE FUND 1275 MARKET STREET SAN FRANCISCO, CA 94103 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 35, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

> Chapter 35. State Compensation Insurance Fund— Conflict of Interest Code

Section

General Provisions 52400.

Appendix

NOTE: Authority and reference cited: Section 81000, et seq., Government Code. HISTORY

- 1. New chapter 35 (section 52400 and appendix) filed 6-14-83; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5-6-83 (Register 83, No. 25)
- 2. Change without regulatory effect amending section filed 6–11–91; operative 7-11-91. Approved by Fair Political Practices Commission on 4-30-91 (Register 91, No. 35).
- 3. Change without regulatory effect amending section filed 6-11-91 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 6).
- 4. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 36. State Assistance Fund for **Enterprise Business and Industrial Developmental Corporation—Conflict of** Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> S.A.F.E.--B.1.D.C.O. 1626 FOURTH ST. SANTA ROSA, CA 95404-4020

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 36, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 36. State Assistance Fund For Enterprise Business and Industrial Development Corporation—Conflict of Interest Code

Section 52500.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302 and 87306, Government Code.

#### HISTORY

1. New chapter 36 (section 52500 and Appendices) filed 1–21–83; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–21–82 (Register 83, No. 4).

- 2. Amendment of section and Appendices A and B filed 4–22–93; operative 5–24–93. Approved by Fair Political Practices Commission 2–17–93 (Register 93, No. 17).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 4. Amendment of agency address, general provisions and appendices A and B filed 7–31–2001; operative 8–30–2001. Approved by Fair Political Practices Commission 6–15–2001 (Register 2001, No. 31).
- Amendment of Appendix A filed 11–20–2003; operative 12–20–2003. Approved by Fair Political Practices Commission 4–28–2003 (Register 2003, No. 47).

### Chapter 37. Department of Personnel Administration—Conflict of Interest Code

ED. NOTE: See Title 2, Division 1, Section 599.885 for Department of Personnel Administration—Conflict of Interest Code printed in full.

NOTE: Authority cited: Section 87300–87313, Government Code.

### HISTORY

- 1. New Chapter 37 (Section 52600 and Appendix) filed 2–9–83; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–21–82 (Register 83, No. 7).
- 2. Editorial deletion of Chapter 37 (Section 52600 and Appendix) (Register 87, No. 10).

# Chapter 38. State Job Training Coordinating Council–Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

STATE JOB TRAINING COORDINATING COUNCIL 800 CAPITOL MALL, 2ND FLOOR, SOLAR (WEST) SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 38, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 38. State Job Training Coordinating Council— Conflict of Interest Code

Section

52700. General Provisions

Appendix A Appendix B

NOTE: Authority and reference cited: Section 81000, et seq., Government Code.

- New Chapter 38 (Section 52700 and Appendices) filed 7–12–84; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 5–7–84 (Register 84, No. 28).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 39. California Wheat Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA WHEAT COMMISSION 433 2ND STREET, SUITE 107 P.O. BOX 402 WOODLAND, CA 95695

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800

SACRAMENTO, CA 95814 ARCHIVES

SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 39, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 39. California Wheat Commission— Conflict of Interest Code

Section

52800. General Provisions

Appendix

NOTE: Authority and reference cited: Section 81000, et seq., Government Code.

#### HISTORY

- 1. New chapter 39 (section 52800 and Appendix) filed 9–6–84; effective thirtieth day thereafter (Register 84, No. 36). Approved by Fair Political Practices Commission 6–5–84 (Register 84, No. 36).
- Change without regulatory effect amending section filed 10–28–91 pursuant to section 100, title 1, California Code of Regulations and submitted to OAL for printing only (Register 92, No. 6).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 40. Employment Training Panel–Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

EMPLOYMENT TRAINING PANEL 800 CAPITOL MALL MIC 64 SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO. CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 40, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 40. Employment Training Panel– Conflict of Interest Code

Section

52900. General Provisions

Appendix A Appendix B

NOTE: Authority and reference cited: Section 81000, et seq., Government Code.

HISTORY

- New chapter 40 (section 52900 and Appendices A and B) filed 5–28–86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 4–8–86 (Register 86, No. 22).
- Change without regulatory effect of Appendix A filed 10–27–89; operative 11–26–89. Approved by Fair Political Practices Commission 8–7–89 (Register 89, No. 45).
- 3. Change without regulatory effect of section 52900 and Appendix A filed 6–21–90; operative 7–21–90. Approved by Fair Political Practices Commission 6–1–90, (Register 90, No. 34).
- Amendment of section and Appendices A and B filed 2–10–93; operative 3–12–93. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–13–92 (Register 93, No. 7).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 6. Amendment of Appendix A filed 11–6–98; operative 12–6–98. Approved by Fair Political Practices Commission 9–15–98 (Register 98, No. 45).
- Amendment of Appendices A and B filed 5-17-2007; operative 6-16-2007.
   Approved by Fair Political Practices Commission 3-27-2007 (Register 2007, No. 20).

### Chapter 41. California State Lottery Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA STATE LOTTERY COMMISSION 600 NORTH 10TH STREET SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 41, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 41. California State Lottery Commission— Conflict of Interest Code

Section

53000.

General Provisions

Appendix

NOTE: Authority and reference cited: Section 81000, et seq., Government Code.

HISTORY

- 1. New Chapter 41 (Section 53000 and Appendix) filed 10–16–86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 9–9–86 (Register 86, No. 42).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 42. Robert Presley Institute for Corrections Research and Training—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

PRESLEY INSTITUTE 3593 CANYON CREST DRIVE RIVERSIDE, CA 92507

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET SACRAMENTO. CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 42, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 42. Robert Presley Institute for Corrections Research and Training—Conflict of Interest Code

Section 53100.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. New Chapter 42 (Section 53100 and Appendix) filed 2–21–89; operative 3–23–89. Approved by Fair Political Practices Commission 1–5–89 (Register 89, No. 9).

# Chapter 43. EIR Certification Panel for the Proposed Department of Corrections Reception Center in Los Angeles County—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict

of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

RESOURCES AGENCY 1416–9TH STREET, ROOM 1311 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO. CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 43, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 43. EIR Certification Panel for the Proposed Department of Corrections Reception Center in Los Angeles County—

Conflict of Interest Code

Section

53200. General Provisions Appendix

NOTE: Authority cited: Section 87300, 87303 and 87311, Government Code. Reference: Section 87300, et. seq., Government Code.

### HISTORY

- 1. New Chapter 43 (Section 53200 and Appendix) filed 8–15–88; operative 9–14–88. Approved by Fair Political Practices Commission 7–21–88 (Register 88, No. 34).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 45. California State World Trade Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA STATE WORLD TRADE COMMISSION 1121 L STREET, SUITE 310 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 45, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 45. California State World Trade Commission— Conflict of Interest Code

Section 53400. General Provisions Appendix

NOTE: Authority cited: Section 83100, et seq., Government Code. Reference: Section 83100, et seq., Government Code.

### HISTORY

- 1. New Chapter 45 (Section 53400 and Appendix) filed 12–14–88; operative 1–13–89. Approved by Fair Political Practices Commission 11–17–88 (Register 88, No. 53).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 46. California Uniform Construction Cost Accounting Commission—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

UNIFORM CONSTRUCTION COST ACCOUNTING P.O. BOX 942850 SACRAMENTO. CA 94350–5876

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 46, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 46. California Uniform Construction Cost Accounting Commission—Conflict of Interest Code

Section

53500.

General Provisions

Appendix

NOTE: Authority cited: Section 87300, 87303 and 87311, Government Code. Reference: Section 87300, et. seq., Government Code.

### HISTORY

- 1. New chapter 46 (section 53500 and appendix) filed 5-30-91; operative 6-29-91. Approved by Fair Political Practices Commission 4-19-91 (Register 91, No. 35).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 47. California State Summer School for the Arts—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations.

CALIFORNIA STATE SUMMER SCHOOL FOR THE ARTS 2012 H STREET, SUITE 201 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 47, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 47. California State Summer School for the Arts— Conflict of Interest Code Section

53600. General Provisions Appendix

NOTE: Authority cited: Section 83100, et seq., Government Code. Reference: Section 83100, et seq., Government Code.

#### HISTORY

1. New Chapter 47 (Section 53600 and Appendix) filed 4–18–91; operative 4–18–91. Approved by Fair Political Practices Commission 2–20–91 (Register 91, No. 21).

### Chapter 48. California Walnut Commission—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA WALNUT COMMISSION
1540 RIVER PARK DRIVE
SUITE 203
SACRAMENTO, CA 95815
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814
ARCHIVES

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO. CA 95814

The conflict of interest code is designated as chapter 48, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 48. California Walnut Commission—Conflict of Interest Code

Section

53700. General Provisions

Appendix A
Appendix B

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300, et seq., Government Code.

### HISTORY

- 1. New chapter 48 (section 53700 and appendices) filed 5–14–92; operative 6–15–92. Approved by Fair Political Practices Commission 3–13–92 (Register 92, No. 20).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Repealer and new section and appendices filed 5–8–2007; operative 6–7–2007. Approved by Fair Political Practices Commission 3–22–2007 (Register 2007, No. 19).

### Chapter 49. California Asparagus Commission—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA ASPARAGUS COMMISSION 4565 QUAIL LAKES DRIVE SUITE A-1 STOCKTON, CA 95207 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 49, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

> Chapter 49. California Asparagus Commission— Conflict of Interest Code

Section

53800.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, 87303 and 87311, Government Code. Reference: Section 87300 et. seq., Government Code.

#### HISTORY

- 1. New chapter 49 (section 53800 and appendices) filed 6–29–92; operative 7–29–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3–24–92 (Register 92, No. 27).
- 2. Editorial correction (Register 95, No. 16).
- 3. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30)

### Chapter 50. California Citizens **Compensation Commission—Conflict of** Interest Code

NOTE: It having been found, pursuant to Government Code section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

> CALIFORNIA CITIZENS COMPENSATION COMMISSION 1515 S STREET, SUITE 400 NORTH BUILDING SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 50, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

California Citizens Compensation Commission— Chapter 50. Conflict of Interest Code

Section

53900.

General Provisions

Appendix

NOTE: Authority cited: Section 87300, 87303 and 87311, Government Code. Reference: Section 87300, et. seq., Government Code.

### HISTORY

- 1. New chapter 50 (section 53900 and appendix) filed 9-10-91; operative 10–10–91. Approved by Fair Political Practices Commission 8–5–91 (Register
- 2. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 51. Lodi-Woodbridge Winegrape Commission—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

LODI-WOODBRIDGE WINEGRAPE COMMISSION

2401 WEST TURNER ROAD

SUITE 360/211

LODI, CA 95242

FAIR POLITICAL PRACTICES COMMISSION

428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE

1020 "O" STREET

SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 51, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 51. Lodi-Woodbridge Winegrape Commission-Conflict of Interest Code

Section

54000.

General Provisions

Appendix A

Appendix B

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300 et seq., Government Code.

#### HISTORY

- 1. New chapter 51 (section 54000 and Appendices) filed 9-24-92; operative 10–26–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 8–20–92 (Register 92, No. 41).
- 2. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 52. University of California Hastings College of the Law—Conflict of **Interest Code**

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

HASTINGS COLLEGE OF THE LAW 200 MCALLISTER ST. SAN FRANCISCO, CA 94102 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 52, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 52. University of California Hastings College of the Law— Conflict of Interest Code

Section

54100. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 52 (section 54100 and Appendix) filed 10-22-91; operative 11-21-91. Approved by Fair Political Practices Commission 9-18-91 and submitted to OAL for printing only (Register 92, No. 6).
- 2. Editorial correction (Register 95, No. 16).

  3. Amendment of Appendix filed 5–3–95; operative 6–2–95. Approved by Fair Political Practices Commission 3–15–95 (Register 95, No. 18).
- 4. Amendment of Appendix A filed 6-3-97; operative 7-3-97. Approved by Fair Political Practices Commission 4-10-97 (Register 97, No. 23)
- 5. Amendment of Appendix A filed 11–12–99; operative 12–12–99. Approved by Fair Political Practices Commission 9–23–99 (Register 99, No. 46).
  6. Amendment of Appendix A filed 8–21–2001; operative 9–20–2001. Approved
- by Fair Political Practices Commission 7-13-2001 (Register 2001, No. 34).

### Chapter 53. State Race Track Leasing Commission—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

DEPARTMENT OF JUSTICE
CHRISTOPHER C. FOLEY
300 S. SPRING ST. SUITE 500
LOS ANGELES, CA 90013
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET. SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 "O" STREET

The Conflict of Interest Code is designated as chapter 53, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 53. State Race Track Leasing Commission— Conflict of Interest Code

Section

54200. General Provisions

SACRAMENTO, CA 95814

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

#### HISTORY

- New chapter 53 (section 54200 and Appendix) filed 12–6–91; operative 1–6–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–6–91 (Register 92, No. 13).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of section and Appendix filed 3-11-2004; operative 4-10-2004. Approved by Fair Political Practices Commission 12-30-2003 (Register 2004, No. 11).

### Chapter 54. Bureau of State Audits—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

OFFICE OF THE AUDITOR GENERAL 660 "I" STREET SUITE 300 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as chapter 54, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 54. Bureau of State Audits—Conflict of Interest Code

Section

54300. General Provisions

Appendix A Appendix B.

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

#### HISTORY

- 1. New chapter 54 (section 54300 and appendix) filed 3–19–92; operative 4–20–92. Approved by Fair Political Practices Commission 2–3–92 (Register 92, No. 15).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 3. Amendment of chapter 54 heading, general provisions and Appendices A and B filed 8–23–99; operative 9–22–99. Approved by Fair Political Practices Commission 7–17–99 (Register 99, No. 35).
- 4. Amendment of general provisions and appendices A and B filed 9–10–2004; operative 10–10–2004. Approved by Fair Political Practices Commission 6–23–2004 (Register 2004, No. 37).
- Amendment of Appendix A filed 12–26–2007; operative 1–25–2008. Approved by Fair Political Practices Commission 11–6–2007 (Register 2007, No. 52).

# Chapter 55. California Managed Risk Medical Insurance Board—Conflict of Interest Code.

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA MANAGED RISK MEDICAL INSURANCE BOARD 818 "K" STREET SUITE 200 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 55, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 55. California Managed Risk Medical Insurance Board— Conflict of Interest Code

Section

54400. General Provisions

Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 55 (section 54400 and appendices) filed 3–30–92; operative 4–29–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 2–18–92 (Register 92, No. 16).
- Change without regulatory effect amending chapter heading, addresses, section and appendices filed 1–25–96; operative 2–24–96. Approved by Fair Political Practices Commission 12–4–95 (Register 96, No. 4).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- 4. Amendment of Appendix A filed 7–14–2003; operative 8–13–2003. Approved by Fair Political Practices Commission 5–12–2003 (Register 2003, No. 29).

# Chapter 56. California Council for Private Postsecondary and Vocational Education—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application and not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA COUNCIL FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION 1027 10TH STREET SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO. CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 56, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 56. California Council for Private Postsecondary and Vocational Education – Conflict of Interest Code

Section

54500.

General Provisions Appendix A

Appendix B

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

- 1. New chapter 56 (section 54500 and appendices) filed 6–9–92; operative 6–9–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3–24–92 (Register 92, No. 24).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

### Chapter 57. Del Mar Race Track Authority—Conflict of Interest Code.

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

DEL MAR RACE TRACK AUTHORITY 2260 JIMMY DURANTE BLVD. DEL MAR. CA 92014

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 57, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 57. Del Mar Race Track Authority – Conflict of Interest Code.

Section

54600.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300 et seq., Government Code.

#### HISTORY

- New chapter 57 (section 54600 and appendix) filed 7-7-92; operative 8-6-92.
   Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3-24-92 (Register 92, No. 28).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 58. Office of Environmental Health Hazard Assessment—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT 601 NORTH 7TH STREET P. O. BOX 942732

SACRAMENTO. CA 94234-7320

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET. SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 58, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 58. Office of Environmental Health Hazard Assessment— Conflict of Interest Code

Section

54700.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300 et seq., Government Code.

### HISTORY

- 1. New chapter 58 (section 54700 and Appendix) filed 7–16–92; operative 8–17–92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6–1–92 (Register 92, No. 29).
- Amendment of Appendix filed 10-4-93; operative 11-3-93. Submitted for printing only. Approved by Fair Political Practices Commission 8-13-93 (Register 93, No. 41).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of section and Appendix filed 2–16–2006; operative 3–18–2006. Approved by Fair Political Practices Commission 1–23–2006 (Register 2006, No. 7)
- 5. Amendment of Appendix filed 9–4–2007; operative 10–4–2007. Approved by Fair Political Practices Commission 6–26–2007 (Register 2007, No. 36).

# Chapter 59. Department of Toxic Substances Control—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

400 P STREET

SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800

SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE 1020 "O" STREET

SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 59, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 59. Department of Toxic Substances Control—Conflict of Interest Code

Section

54800. General Provisions Appendix

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300 et seq., Government Code.

### HISTORY

- 1. New chapter 59 (section 54800 and Appendix) filed 9-16-93. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 8-12-93 (Register 93, No. 38).
- 2. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 60. Lake County District Two-Local Winegrape Commission— Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application and not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

> LAKE COUNTY WINEGRAPE COMMISSION P.O. BOX 90 COBB, CA 95426

> FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 60, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

> Chapter 60. Lake County District Two— Local Winegrape Commission-Conflict of Interest Code

Section

54900. General Provisions Appendix A

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300, et seq., Government Code.

# HISTORY

- 1. New chapter 51 (section 54000 and appendix) filed 9-14-92; operative 10-14-92. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 7-31-92 (Register 92, No. 38).
- 2. Amendment changing chapter and section number from chapter 51, section 54000 to chapter 60, section 54900 filed 10-15-92; operative 11-16-92 (Register 92, No. 42).

# Chapter 61. California Pepper Commission—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344. that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

> CALIFORNIA PEPPER COMMISSION 531 NORTH ALTA AVENUE, SUITE D **DINUBA, CA 93618**

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 61, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

> Chapter 61. California Pepper Commission— Conflict of Interest Code

Section

55000. General Provisions Appendix A Appendix B

NOTE: Authority cited: Sections 87300, 87303 and 87311, Government Code. Reference: Section 87300, et seq., Government Code.

### HISTORY

- 1. New chapter 61 (section 55000 and Appendices A and B) filed 12-16-92; operative 1–15–93. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3–24–92 (Register 92, No. 51)
- Editorial correction of address for the Fair Political Practices Commission (Reg-

# Chapter 62. California Mental Health Planning Council—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

> CALIFORNIA MENTAL HEALTH PLANNING COUNCIL 1600 NINTH STREET ROOM 100 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 62, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 62. California Mental Health Planning Council-Conflict of Interest Code

Section

55100. General Provisions Appendix A

Appendix B

# HISTORY

- 1. Change without regulatory effect relocating section from division 6, section 18730, to division 8, chapter 62, section 55100, and amending format filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No.1).
- 2. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of Appendix A filed 11–3–97; operative 12–3–97. Approved by Fair Political Practices Commission 9–10–97 (Register 97, No. 45). Amendment of Appendix A filed 7–29–99; operative 8–28–99. Approved by
- Fair Political Practices Commission 6-11-99 (Register 99, No. 31).

# Chapter 63. Delta Protection Commission—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344. that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

DELTA PROTECTION COMMISSION 14219 RIVER ROAD BOX 530 WALNUT GROVE, CA 95690

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800

SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 63, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 63. Delta Protection Commission— Conflict of Interest Code

Section

55200.

General Provisions Appendix A Appendix B

HISTORY

- New section filed 3-1-94; operative 3-31-94. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 1-18-94 (Register 94, No. 9).
- 2. Editorial correction (Register 95, No. 16).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 64. California State Library—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA STATE LIBRARY
P.O. BOX 942837
SACRAMENTO, CA 94237-0001
FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 64, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 64. California State Library— Conflict of Interest Code

Section

55300.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

- New chapter 64 (section 55300 and Appendices A and B) filed 3–14–94; operative 4–13–94. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 1–19–94 (Register 94, No. 11).
   Amendment of Appendix A filed 12–19–95; operative 1–18–96. Submitted to
- 2. Amendment of Appendix A filed 12–19–95; operative 1–18–96. Submitted to OAL for printing only pursuant to Government Code section 87303. Approved by Fair Political Practices Commission 10–16–95 (Register 95, No. 51).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of section and Appendix B filed 1–30–2002; operative 3–1–2002. Approved by Fair Political Practices Commission 11–26–2001 (Register 2002, No. 5).
- 5. Amendment of section and Appendices A and B filed 1–17–2006; operative 2–16–2006. Approved by Fair Political Practices Commission 11–16–2005 (Register 2006, No. 3).

 Amendment of Appendix A filed 3–19–2008; operative 4–18–2008. Approved by Fair Political Practices Commission 2–26–2008 (Register 2008, No. 12).

# Chapter 65. San Joaquin River Conservancy—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

SAN JOAQUIN RIVER CONSERVANCY 701 UNIVERSITY AVE., SUITE 205 SACRAMENTO, CA 95825

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 65, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 65. San Joaquin River Conservancy— Conflict of Interest Code

Section 55400.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

- 1. New chapter 65 (section 55400 and Appendix A and B) filed 4–20–95; operative 5–22–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 2–9–95 (Register 95, No. 16).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of appendices A and B filed 7–18–2005; operative 8–17–2005. Approved by Fair Political Practices Commission 5–16–2005 (Register 2005, No. 29)

# Chapter 66. Intercity High Speed Rail Commission—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

INTERCITY HIGH SPEED RAIL COMMISSION 1801 30TH STREET EAST BUILDING SACRAMENTO, CA 94274-0001

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 66, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 66. Intercity High Speed Rail Commission— Conflict of Interest Code

Section 55500.

General Provisions Appendix A Appendix B NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

- 1. New chapter 66 (section 55500 and Appendices A and B) filed 6–20–95; operative 7–20–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 4–10–95 (Register 95, No. 25).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

[The next page is 488.7.]

# Chapter 67. California Housing Partnership Corporation—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA HOUSING PARTNERSHIP CORPORATION 2201 BROADWAY, SUITE 823 OAKLAND, CA 94612

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO. CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 67, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 67. California Housing Partnership Corporation— Conflict of Interest Code

Section

55600.

General Provisions Appendix A

### HISTORY

- 1. New chapter 67 (section 55600 and Appendix A) filed 5–1–95; operative 5–31–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3–31–95 (Register 95, No. 18).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 68. Southwestern Low-Level Radioactive Waste Commission—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION 601 NORTH SEVENTH STREET

MS 396

SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800

SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE

1020 "O" STREET

SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 68, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 68. Southwestern Low–Level Radioactive Waste Commission—Conflict of Interest Code

Section

55700.

General Provisions Appendix A

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 68 (section 55700 and Appendix A) filed 8–23–95; operative 9–22–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6–5–95 (Register 95, No. 34).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 69. California Constitution Revision Commission—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA CONSTITUTION REVISION COMMISSION 1201 "K" STREET

SUITE 1740

SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE 1020 "O" STREET

SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 69, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 69. California Constitution Revision Commission— Conflict of Interest Code

Section

55800.

General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

- New chapter 69 (section 55800 and Appendix) filed 8-3-95; operative 9-2-95.
   Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6-28-95 (Register 95, No. 31).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 70. County Medical Services Program—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code Section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

COUNTY MEDICAL SERVICES PROGRAM 1800 3RD STREET, ROOM 100 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 70, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 70. County Medical Services Program Conflict of Interest Code

Section

55900. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

- New chapter 70 (Section 55900 and Appendix) filed 9–18–95; operative 10–18–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 7–26–95 (Register 95, No. 38).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).

# Chapter 71. California Service Corps—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA SERVICE CORPS 1121 "L" STREET, SUITE 600 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET. SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 71, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 71. California Service Corps—Conflict of Interest Code

Section

56000. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

# HISTORY

- 1. New chapter 71 (section 56000 and Appendix) filed 11–14–95; operative 12–14–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 9–25–95 (Register 95, No. 46).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of chapter heading and amendment of general provisions and appendix filed 8–28–2003; operative 9–27–2003. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 7–10–2003 (Register 2003. No. 35).
- Amendment of chapter heading, general provisions and appendix filed 9-15-2005; operative 10-15-2005. Approved by Fair Political Practices Commission 7-11-2005 (Register 2005, No. 37).

# Chapter 72. California Strawberry Commission—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA STRAWBERRY COMMISSION P.O. BOX 269 WATSONVILLE, CA 95077–0269 FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800

SACRAMENTO. CA 95814 ARCHIVES SECRETARY OF STATE

1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 72, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 72. California Strawberry Commission—Conflict of Interest

Code

Section

56100. General Provisions

Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

- 1. New chapter 72 (section 56100 and Appendices A and B) filed 11–30–95; operative 12–30–95. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 9–28–95 (Register 95, No. 48).
- Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 30).
- Amendment of Appendices A and B filed 2–14–2001; operative 3–16–2001.
   Approved by Fair Political Practices Commission 12–8–2000 (Register 2001, No. 7).

# Chapter 73. State Allocation Board—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

STATE ALLOCATION BOARD 1130 "K" STREET, SUITE 400 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 73, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 73. State Allocation Board—Conflict of Interest Code

Section

56200. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

- 1. New chapter 73 (section 56200 and Appendix) filed 4–15–96; operative 5–15–96. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6–29–95 (Register 96, No. 16).
- 2. Editorial correction of Archives address (Register 96, No. 40).
- 3. Amendment of address for the State Allocation Board and amendment of Appendix filed 4–4–2001; operative 5–4–2001. Approved by Fair Political Practices Commission 2–15–2001 (Register 2001, No. 14).
- 4. Amendment of section and Appendix filed 3–14–2007; operative 4–13–2007. Approved by Fair Political Practices Commission 1–4–2007 (Register 2007, No. 11).

# Chapter 74. Department of Information Technology—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

DEPARTMENT OF INFORMATION TECHNOLOGY 915 CAPITOL MALL, SUITE 312 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 J STREET, SUITE 800 SACRAMENTO, CA 95804–0807

ARCHIVES SECRETARY OF STATE 1020 O STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 74, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 74. Department of Information Technology—Conflict of Interest Code

Section

56300. General Provisions

Appendix

HISTORY

1. New chapter 74 (section 56300 and Appendix) filed 10-1-96; operative 10-31-96. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 7-15-96 (Register 96, No. 40).

# Chapter 75. Child Development Advisory Programs Committee—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

CHILD DEVELOPMENT ADVISORY PROGRAMS COMMITTEE 915 CAPITOL MALL, ROOM 336 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 75, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 75. Child Development Advisory Programs Committee— Conflict of Interest Code

Section

56400.

General Provisions Appendix A

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–8732 and 87306, Government Code.

### HISTORY

 New chapter 75 (section 56400 and Appendix A) filed 1–24–97; operative 2–23–97. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–19–96 (Register 97, No. 4).

# Chapter 76. Commission for the Establishment of Academic Content and Performance Standards—Conflict of Interest Code

It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The Regulations are available to the public for review or purchase at cost at the following locations:

COMMISSION FOR THE ESTABLISHMENT OF ACADEMIC CONTENT AND PERFORMANCE STANDARDS 801 "K" STREET, SUITE 912 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 76, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 76. Commission For The Establishment Of Academic Content and Performance Standards—Conflict of Interest Code

Section

56500.

General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–8732 and 87306, Government Code.

# HISTORY

1. New chapter 76 (section 56500 and Appendix) filed 9-4-97; operative 10-4-97. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6-12-97 (Register 97, No. 36).

# Chapter 77. California Tomato Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA TOMATO COMMISSION 1625 E. SHAW AVENUE, SUITE 122 FRESNO, CA 93710

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CALIFORNIA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 77, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

# Chapter 77. California Tomato Commission— Conflict of Interest Code

Section

56600. General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–8732 and 87306, Government Code.

### HISTORY

1. New Chapter 77 (section 56600 and Appendix A and B) filed 11–19–97; operative 12–19–97. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 9–15–97 (Register 97, No. 47).

# Chapter 78. California Cut Flower Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA CUT FLOWER COMMISSION 11344 COLOMA ROAD, SUITE 450 GOLD RIVER. CA 95670 FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO. CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET

The Conflict of Interest Code is designated as Chapter 78, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 78. California Cut Flower Commission— Conflict of Interest Code

Section

56700. General Provisions

Appendix A Appendix B

SACRAMENTO, CA 95814

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

 New chapter 78 (section 56700 and Appendix A and B) filed 6-1-98; operative 6-1-98. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3-24-98 (Register 98, No. 23).

# Chapter 79. California Earthquake Authority—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA EARTHQUAKE AUTHORITY
300 CAPITOL MALL, SUITE 1230
SACRAMENTO, CA 94814
FAIR POLITICAL PRACTICES COMMISSION
428 "J" STREET, SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 79, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 79. California Earthquake Authority— Conflict of Interest Code

Section

56800. General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 79 (section 56800 and Appendix A and B) filed 2–3–98; operative 3–5–98. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 12–22–97 (Register 98, No. 6).
- 2. Editorial correction of addresses and Note (Register 98, No. 10).
- Editorial change amending chapter number and HISTORY 1 (Register 98, No. 23).
- 4. Amendment filed 3–13–2002; operative 4–12–2002. Approved by Fair Political Practices Commission 1–8–2002 (Register 2002, No. 11).
- 5. Amendment filed 7–14–2003; operative 8–13–2003. Approved by Fair Political Practices Commission 5–21–2003 (Register 2003, No. 29).

# Chapter 80. California Grape Rootstock Improvement Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA GRAPE ROOTSTOCK IMPROVEMENT COMMISSION 1112 "I" STREET, SUITE 200 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 80, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 80. California Grape Rootstock Commission— Conflict of Interest Code

Section

56900. General Provisions Appendix A

Appendix A
Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# **HISTORY**

1. New chapter 80 (section 56900 and Appendix A and B) filed 8–17–98; operative 9–16–98. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 7–6–98 (Register 98, No. 34).

# Chapter 81. California Apple Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA APPLE COMMISSION 1112 "I" STREET, SUITE 200 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 81, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 81. California Apple Commission— Conflict of Interest Code

Section

57000.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

1. New chapter 81 (section 57000 and Appendix A and B) filed 8–10–98; operative 9–9–98. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6–8–98 (Register 98, No. 33).

# Chapter 82. California Forest Products Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA FOREST PRODUCTS COMMISSION 853 LINCOLN WAY, SUITE 208 AUBURN. CA 95603–4815

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 82, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 82. California Forest Products Commission— Conflict of Interest Code

Section

57100.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

1. New chapter 82 (section 57100 and Appendix A and B) filed 7–20–98; operative 8–19–98. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6–8–98 (Register 98, No. 30).

# Chapter 83. California State University Risk Management Authority—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA STATE UNIVERSITY RISK MANAGEMENT AUTHORITY PROGRAM ADMINISTRATORS

P.O. BOX 7601

SAN FRANCISCO, CA 94120

FAIR POLITICAL PRACTICES COMMISSION

428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE

SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 83, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 83. California State University Risk Management Authority—Conflict of Interest Code

Section

57200.

General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

New chapter 83 (section 57200 and Appendix) filed 3–6–98; operative 4–5–98.
 Submitted to OAL for printing only. Approved by Fair Political Practices Commission 12–2–97 (Register 98, No. 10).

# Chapter 84. California Gold Discovery to Sesquicentennial Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA GOLD DISCOVERY TO SESQUICENTENNIAL COMMISSION 1020 "O" STREET, SUITE 301 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 84, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 84. California Gold Discovery to Sesquicentennial Commission—Conflict of Interest Code

Section

57300. General Provisions

Appendix A

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

# HISTORY

1. New chapter 84 (section 57300 and Appendix A) filed 12–21–98; operative 1–20–99. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 9–5–98 (Register 98, No. 52).

# Chapter 85. California High Speed Rail Authority—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by ref-

erence. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA HIGH SPEED RAIL AUTHORITY 925 "L" STREET, SUITE 1425 SACRAMENTO. CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 85, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 85. California High Speed Rail Authority—Conflict of Interest Code

Section

57400.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300, 87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 85 (section 57400 and Appendices A and B) filed 10–27–98; operative 11–26–98. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 9–4–98 (Register 98, No. 44).
- Amendment of general provisions and appendices filed 8-20-2001; operative 9-19-2001. Approved by Fair Political Practices Commission 6-27-2001 (Register 2001, No. 34).

# Chapter 86. State Independent Living Council—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA INDEPENDENT LIVING COUNCIL 1600 "K" STREET, SUITE 100 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 86, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 86. State Independent Living Council—Conflict of Interest Code

Section

57500.

General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

# History

1. New chapter 86 (section 57500 and Appendix) filed 10–19–98; operative 11–18–98. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 8–19–98 (Register 98, No. 43).

# Chapter 88. California State University, Channel Islands Site Authority—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA STATE UNIVERSITY CHANNEL ISLANDS SITE AUTHORITY 401 GOLDDEN SHORE, 4TH FLOOR LONG BEACH, CA 90802–4210

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 88, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 88. California State University, Channel Islands Site Authority—Conflict of Interest Code

Section

57700. General Provisions

Appendix A

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

HISTORY

1. New chapter 88, section and Appendix A filed 3–9–2000; operative 4–8–2000. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 12–22–1999 (Register 2000, No. 10).

# Chapter 89. California Date Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA DATE COMMISSION 1112 "I" STREET, SUITE 200 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 89, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 89. California Date Commission—Conflict of Interest Code

Section 57800.

General Provisions

Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

1. New chapter 89, section and Appendices A and B filed 5–30–2000; operative 6–29–2000. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 4–3–2000 (Register 2000, No. 22).

# Chapter 90. California Rice Commission — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA RICE COMMISSION 701 UNIVERSITY AVE., SUITE 205 SACRAMENTO, CA 95825

FAIR POLITICAL PRACTICES COMMISSION

428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE

1020 "O" STREET

SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 90, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 90. California Rice Commission — Conflict of Interest Code

Section

57900.

General Provisions

Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

1. New chapter 90 (section 57900 and Appendices A and B) filed 9–21–2000; operative 10–21–2000. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 7–25–2000 (Register 2000, No. 38).

# Chapter 91. California Children and Families Commission—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

CALIFORNIA CHILDREN AND FAMILIES COMMISSION

501 "J" STREET, SUITE 530

SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION

428 "J" STREET, SUITE 800

SACRAMENTO, CA 95814

ARCHIVES

numbered and titled as follows:

SECRETARY OF STATE 1020 "O" STREET

SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 91, Division 8 of Title 2 of the California Code of Regulations, and consists of sections

Chapter 91. California Children and Families Commission— Conflict of Interest Code

Section

58000.

General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

1. New chapter 91 (section 58000), section and Appendix filed 4–12–2000; operative 5–12–2000. Approved by Fair Political Practices Commission 3–17–2000 (Register 2000, No. 15).

# Chapter 92. California Travel and Tourism Commission — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA TRAVEL AND TOURISM COMMISSION

1011 TENTH ST.

SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION

428 "J" STREET, SUITE 800

SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE

1020 "O" STREET

SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 92, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 92. California Travel and Tourism Commission — Conflict of Interest Code

Section

58100. General Provisions

Appendix A

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

1. New chapter 92 (section 58100), section and Appendix A filed 9-14-2001; operative 10-14-2001. Approved by Fair Political Practices Commission 7-9-2001 (Register 2001, No. 37).

# Chapter 93. Office of Traffic Safety—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

OFFICE OF TRAFFIC SAFETY

7000 FRANKLIN BOULEVARD, SUITE 440

SACRAMENTO, CA 95823

FAIR POLITICAL PRACTICES COMMISSION

428 "J" STREET, SUITE 800

SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE

1020 "O" STREET

SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 93, Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 93. Office of Traffic Safety—Conflict of Interest Code

Section

58200.

General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

1. Change without regulatory effect renumbering former title 13, section 1801 to title 2, division 8, chapter 93, section 58200 (conflict of interest code and appen-

dix incorporated by reference) filed 11–15–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 47).

# Chapter 94. Office of the State Governor—Conflict of Interest Code

**NOTE:** It having been found, pursuant to Government Code section 11344, that the printing of regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

OFFICE OF THE STATE GOVERNOR STATE CAPITOL SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Chapter 94. Division 8 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 94. Office of the State Governor—Conflict of Interest Code

Section

58300. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

1. New chapter 94 (section 58300 and Appendix) filed 3–13–2000; operative 4–12–2000. Approved by Fair Political Practices Commission 2–3–2000 (Register 2000, No. 11).

# Chapter 95. California Gambling Control Commission — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA GAMBLING CONTROL COMMISSION 300 CAPITOL MALL, SUITE 300 SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 95, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 95. California Gambling Control Commission — Conflict of Interest Code

Section

58400 General Provisions Appendix A

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300 and 87302, Government Code.

# HISTORY

1. New chapter 95 (section 58400 and Appendix A) filed 7–19–2001; operative 8–18–2001. Approved by Fair Political Practices Commission 6–21–2001 (Register 2001, No. 29).

# Chapter 96. California Sheep Commission—Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA SHEEP COMMISSION
1112 "I" STREET. SUITE 200
SACRAMENTO, CA 95814
FAIR POLITICAL PRACTICES COMMISSION
428 "I" STREET. SUITE 800
SACRAMENTO, CA 95814
ARCHIVES
SECRETARY OF STATE
1020 "O" STREET
SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 96, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 96. California Sheep Commission— Conflict of Interest Code

Section

58500. General Provisions

Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300 and 87302, Government Code.

### HISTORY

1. New chapter 96 (section 58500 and Appendices A and B) filed 1–24–2002; operative 2–23–2002. Approved by Fair Political Practices Commission 11–21–2001 (Register 2002, No. 4).

# Chapter 97. California Workforce Investment Board — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA WORKFORCE INVESTMENT BOARD 777 TWELFTH STREET, SUITE 200 SACRAMENTO. CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 97, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 97. California Workforce Investment Board — Conflict of Interest Code

Section

58600. General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

 New Chapter 97 (Section 58600 and Appendix) filed 2–20–2004; operative 3–21–2004. Approved by Fair Political Practices Commission 12–9–2003 (Register 2004, No. 8).

# Chapter 98. California Electricity Oversight Board — Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> CALIFORNIA ELECTRICITY OVERSIGHT BOARD 770 "L" STREET, SUITE 1250 SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET

The conflict of interest code is designated as chapter 98, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 98. California Electricity Oversight Board — Conflict of Interest Code

Section

58700.

General Provisions Appendix A

SACRAMENTO, CA 95814

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### **HISTORY**

- 1. New chapter 98 (section 58700 and Appendix A) filed 12–10–2002; operative 1–9–2002. Approved by Fair Political Practices Commission 10–7–2002 (Register 2002, No. 50).
- 2. Amendment of general provisions and appendix filed 11-22-2004; operative 11–22–2004. Approved by Fair Political Practices Commission 9–27–2004 (Register 2004, No. 47).
- 3. Amendment filed 12–17–2007; operative 1–16–2008. Approved by Fair Political Practices Commission 10–31–2007 (Register 2007, No. 51).

# Chapter 99. California Labor and Workforce Development Agency — Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY 801 "K" STREET, SUITE 2101

SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION

428 "J" STREET, SUITE 800

SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE

1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 99, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 99. California Labor and Workforce Development Agency — Conflict of Interest Code

Section

58800.

General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

- 1. New chapter 99 (section 58800 and Appendix) filed 6-15-2004; operative 7-15-2004. Approved by Fair Political Practices Commission 4-16-2004 (Register 2004, No. 25).
- 2. Amendment of appendix filed 9-7-2005; operative 10-7-2005. Approved by Fair Political Practices Commission 7–6–2005 (Register 2005, No. 36).
- 3. Amendment of appendix filed 8-3-2007; operative 9-2-2007. Approved by Fair Political Practices Commission 6–6–2007 (Register 2007, No. 31).

# Chapter 101. Baldwin Hills Conservancy — **Conflict of Interest Code**

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> BALDWIN HILLS CONSERVANCY 6133 BRISTOL PARKWAY, SUITE 300 CULVER CITY, CA 90230

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 101, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 101. Baldwin Hills Conservancy — Conflict of Interest Code

Section

59000. General Provisions

> Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

# HISTORY

1. New chapter 101 (section 59000 and Appendices A and B) filed 8-7-2002; operative 9–6–2002. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 5–24–2002 (Register 2002, No. 32).

# Chapter 102. Office of the Inspector General—Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> OFFICE OF THE INSPECTOR GENERAL P. O. BOX 348780 SACRAMENTO, CA 95834-8780

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 102, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

# Chapter 102. Office of the Inspector General— Conflict of Interest Code

Section

59100. General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Section 87300–87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 102 (section 59100 and Appendix) filed 3-27-2002; operative 4-26-2002. Approved by Fair Political Practices Commission 2-25-2002 (Register 2002, No. 13).
- 2. Amendment of Appendix filed 3–15–2007; operative 4–14–2007. Approved by Fair Political Practices Commission 1–8–2007 (Register 2007, No. 11).

# Chapter 103. California Climate Action Registry — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA CLIMATE ACTION REGISTRY 515 SOUTH FLOWER STREET, SUITE 1305 LOS ANGELES, CA 90071

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 103, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 103. California Climate Action Registry — Conflict of Interest Code

Section

59150. General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

# HISTORY

- 1. New chapter 103 (section 59150 and Appendix) filed 2-23-2004; operative 3-24-2004. Approved by Fair Political Practices Commission 12-8-2003 (Register 2004, No. 9).
- Amendment of section and Appendix filed 1–30–2006; operative 3–1–2006. Approved by Fair Political Practices Commission 12–7–2005 (Register 2006, No. 5).

# Chapter 105. California Bay Delta Authority — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA BAY DELTA AUTHORITY 650 CAPITOL MALL. FIFTH FLOOR SACRAMENTO. CA 95814

FAIR POLITICAL PRACTICES COMMISSION 428 "1" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 105, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 105. California Bay Delta Authority — Conflict of Interest Code

Section 59152.

General Provisions

Appendix

NOTE: Authority cited: Sections 87300 and 87306, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

HISTORY

1. New section and Appendix filed 5–25–2004; operative 6–24–2004. Approved by Fair Political Practices Commission 3–30–2004 (Register 2004, No. 22).

# Chapter 106. California Consumer Power and Conservation Financing Authority — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

CALIFORNIA CONSUMER POWER AND CONSERVATION FINANCING AUTHORITY 901 "P" STREET, SUITE 142A SACRAMENTO, CA 95814 FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 106, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 106. California Consumer Power and Conservation Financing
Authority — Conflict of Interest Code

Section

59500. General Provisions

Appendix

NOTE: Authority cited: Sections 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

HISTORY

1. New chapter 106 (section 59500 and Appendix) filed 12–1–2003; operative 12–31–2003. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 10–6–2003 (Register 2003, No. 49).

# Chapter 107. California Commission for Economic Development — Conflict of Interest Code

**NOTE:** Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be

(1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> CALIFORNIA COMMISSION FOR ECONOMIC DEVELOPMENT 300 SOUTH SPRING STREET, SUITE 12702 LOS ANGELES, CA 90013

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 107, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 107. California Commission for Economic Development — Conflict of Interest Code

Section

59520.

General Provisions Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

1. New chapter 107 (section 59520 and Appendix) filed 8-9-2005; operative 9-8-2005. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 6-9-2005 (Register 2005, No. 32).

# Chapter 108. Santa Monica Bay Restoration Commission — Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> SANTA MONICA BAY RESTORATION COMMISSION 300 W. FOURTH STREET, 2ND FLOOR LOS ANGELES, CA 90013

FAIR POLITICAL PRACTICES COMMISSION 428 "1" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 108, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 108. Santa Monica Bay Restoration Commission — Conflict of Interest Code

Section

59530. General Provisions

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

1. New chapter 108 (section 59530) filed 1-3-2005; operative 2-2-2005. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 11–4–2004 (Register 2005, No. 1).

# Chapter 111. California Cultural and Historical Endowment — Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> CALIFORNIA CULTURAL AND HISTORICAL ENDOWMENT P.O. BOX 942837 SACRAMENTO, CA 94237-0001 FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 111, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 111. California Cultural and Historical Endowment — Conflict of Interest Code

Section

59560.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Sections 87300 and 87306, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

### HISTORY

- 1. New chapter 111 (section 59560 and Appendices A and B) filed 5-24-2006; operative 6-23-2006. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3-27-2006 (Register 2006, No. 21).

  2. Amendment of Appendix filed 6-15-2007; operative 7-15-2007. Approved by Fair Political Practices Commission 4-30-2007 (Register 2007, No. 24).

# Chapter 112. Sonoma County Winegrape Commission — Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> SONOMA COUNTY WINEGRAPE COMMISSION 420 AVIATION BLVD., SUITE 106 SANTA ROSA, CA 95403

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 112, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 112. Sonoma County Winegrape Commission — Conflict of Interest Code

Section

59570.

General Provisions Appendix

NOTE: Authority cited: Sections 87300, Government Code. Reference: Section 87300-87302 and 87306, Government Code.

1. New chapter 112 (section 59570 and Appendix) filed 6-17-2008; operative 7–17–2008. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 5–16–2008 (Register 2008, No. 25).

# Chapter 113. Mendocino Winegrape and Wine Commission — Conflict of Interest

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> MENDOCINO WINEGRAPE AND WINE COMMISSION P.O. BOX 191167 SACRAMENTO, CA 95819

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA. 95814

The conflict of interest code is designated as chapter 113, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 113. Mendocino Winegrape and Wine Commission — Conflict of Interest Code

Section

59580.

General Provisions Appendix

NOTE: Authority cited: Sections 87300, Government Code. Reference: Section 87300-87302 and 87306, Government Code.

1. New chapter 113 (section 59580 and Appendix) filed 5-21-2008; operative 6–20–2008. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3–18–2008 (Register 2008, No. 21).

# Chapter 114. Ocean Protection Council — **Conflict of Interest Code**

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> OCEAN PROTECTION COUNCIL 1330 BROADWAY, SUITE 1300 OAKLAND, CA 94612

FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 114, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 114. Ocean Protection Council — Conflict of Interest Code

Section

59590 General Provisions

Appendix

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

### HISTORY

1. New section and Appendix filed 3-27-2007; operative 4-26-2007. Approved by Fair Political Practices Commission 12-29-2006 (Register 2007, No. 13).

# Chapter 117. California African American Museum — Conflict of Interest Code

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> CALIFORNIA AFRICAN AMERICAN MUSEUM 600 STATE DRIVE, EXPOSITION PARK LOS ANGELES, CA 90037 FAIR POLITICAL PRACTICES COMMISSION 428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814 ARCHIVES

SECRETARY OF STATE 1020 "O" STREET SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 117, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 117. California African American Museum — Conflict of Interest Code

Section

59620.

General Provisions Appendix A Appendix B

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300-87302 and 87306, Government Code.

# HISTORY

1. New chapter 117 (section 59620 and Appendices A and B) filed 5-13-2008; operative 6–12–2008. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 3–18–2008 (Register 2008, No. 20).

# Chapter 118. Citizens Financial Accountability Oversight Committee — **Conflict of Interest Code**

NOTE: Pursuant to a regulation of the Fair Political Practices Commission (Title 2, CCR, section 18750(k)(2)), an agency adopting a conflict of interest code has the options of requesting that the code either be (1) printed in the CCR in its entirety or (2) incorporated by reference into the CCR. Here, the adopting agency has requested incorporation by reference. However, the full text of the regulations is available to the public for review or purchase at cost at the following locations:

> CITIZENS FINANCIAL ACCOUNTABILITY OVERSIGHT COMMITTEE P.O. BOX 942850

SACRAMENTO, CA 94250-5872

FAIR POLITICAL PRACTICES COMMISSION

428 "J" STREET, SUITE 800 SACRAMENTO, CA 95814

ARCHIVES

SECRETARY OF STATE

1020 "O" STREET

SACRAMENTO, CA 95814

The conflict of interest code is designated as chapter 118, division 8 of title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 118. Citizens Financial Accountability Oversight
Committee — Conflict of Interest Code

Section 59630.

General Provisions Appendix A Appendix B NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300–87302 and 87306, Government Code.

### HISTORY

1. New chapter 118 (section 59630 and Appendices A and B) filed 3–28–2008; operative 4–27–2008. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 2–26–2008 (Register 2008, No. 13).

\* \* \*

Barclays Official

# CALIFORNIA CODE OF REGULATIONS

# Title 2. Administration

Division 9. Joint Regulations for Pupils with Disabilities

Vol. 3



# Division 9. Joint Regulations for Pupils with Disabilities

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# Division 9. Joint Regulations for Pupils with Disabilities

# Chapter 1. Interagency Responsibilities for Providing Services to Pupils with Disabilities

# Article 1. General Provisions

# § 60000. Scope.

The provisions of this chapter shall implement Chapter 26.5, commencing with Section 7570, of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to pupils with disabilities. This chapter applies to the State Departments of Mental Health, Health Services, Social Services, and their designated local agencies, and the California Department of Education, school districts, county offices, and special education local plan areas.

The intent of this chapter is to assure conformity with the federal Individuals with Disabilities Education Act or IDEA, Sections 1400 et seq. of Title 20 of the United States Code, and its implementing regulations, including Sections 76.1 et seq. and 300.1 et seq. of Title 34 of the Code of Federal Regulations. Thus, provisions of this chapter shall be construed as supplemental to, and in the context of, federal and state laws and regulations relating to interagency responsibilities for providing services to pupils with disabilities.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7570, Government Code.

### HISTORY

- 1. New Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) filed 12–31–85 as an emergency; designated effective 1–1–86 (Register 86, No. 1). A Certificate of Compliance must be transmitted to OAL within 180 days or emergency language will be repealed on 6–30–86.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) refiled 6–30–86 as an emergency; designated effective 1–1–86 (Register 86, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–28–86.
- 3. Editorial correction of HISTORY NOTE No. 1 (Register 86, No. 28).
- 4. Effective period of emergency language which was refiled 6–30–86 extended to 5–1–87 pursuant to Chapter 1133, Statutes of 1986 (Register 87, No. 30).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) refiled 5–1–87 as an emergency; designated effective 5–1–87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–31–87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 7. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 9. New Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- 10. Editorial correction restoring prior HISTORIES 1–6, adding new HISTORIES 7–8, and renumbering and amending existing HISTORY 1 to new HISTORY 9 (Register 98, No. 44).
- 11. New Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 12. New Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99

- or emergency language will be repealed by operation of law on the following day.
- 13. Certificate of Compliance as to 2–25–99 order transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60010. Education Definitions.

- (a) Words shall have their usual meaning unless the context or a definition of a word or phrase indicates a different meaning. Words used in their present tense shall include the future tense; words in the singular form shall include the plural form; and use of the masculine gender shall include the feminine gender.
- (b) "Administrative designee" means the individual who fulfills the role as described in paragraph (1) of subsection (b) of Section 56341 of the Education Code and paragraph (1) of subsection (a) of Section 300.344 of Title 34 of the Code of Federal Regulations.
- (c) "Assessment" means an individual evaluation of a pupil in all areas of suspected disability in accordance with Sections 56320 through 56329 of the Education Code and Sections 300.530 through 300.534 of Title 34 of the Code of Federal Regulations.
- (d) "Assessment plan" means a written statement that delineates how a pupil will be evaluated and meets the requirements of Section 56321 of the Education Code.
- (e) "Confidentiality" means the restriction of access to verbal and written communications, including clinical, medical and educational records, to appropriate parties under Section 99.3 of Title 45 of the Code of Federal Regulations, Section 300.560 et seq. of Title 34 of the Code of Federal Regulations, Sections 827, 4514, 5328, and 10850 of the Welfare and Institutions Code, Section 2890 of Title 17 of the California Code of Regulations, and Sections 49060 through 49079 of the Education Code.
- (f) "County superintendent of schools" means either an appointed or elected official who performs the duties specified in Chapter 2 (commencing with Section 1240) of Part 2 of Title 1 of the Education Code.
- (g) "Day" means a calendar day pursuant to Section 56023 of the Education Code.
- (h) "Designated instruction and services" means specially designed instruction and related services described in subsection (b) of Section 56361 and subsection (b) of Section 56363 of the Education Code, and Section 3051 of Title 5 of the California Code of Regulations, as may be required to assist a pupil with a disability to benefit educationally.
- (i) "Individualized education program," hereinafter "IEP," means a written statement developed in accordance with Section 7575 of the Government Code, Sections 56341 and 56342 of the Education Code and Sections 300.340 through 300.350 of Title 34 of the Code of Federal Regulations, which contains the elements specified in Section 56345 of the Education Code and Section 300.347 of Title 34 of the Code of Federal Regulations.
- (j) "Individualized education program team," hereinafter "IEP team," means a group which is constituted in accordance with Section 56341 of the Education Code and Title 20, United States Code Section 1414(d)(1)(B).
- (k) "Local education agency," hereinafter "LEA," means a school district or county office of education which provides special education and related services.
- (*l*) "Local interagency agreement" means a written document negotiated between two or more public agencies which defines each agency's role and responsibilities for providing services to pupils with disabilities and for facilitating the coordination of these services in accordance with the provisions of Section 56220 of the Education Code.
- (m) "Necessary to benefit from special education" means a service that assists the pupil with a disability in progressing toward the goals and objectives listed in the IEP in accordance with subsection (d) of Section 7572 and paragraph (2) of subsection (a) of Section 7575 of the Government Code.
- (n) "Nonpublic, nonsectarian agency" means a private, nonsectarian establishment or individual that is certified by the California Department of Education and that provides related services and/or designated instruc-

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tion and services necessary for a pupil with a disability to benefit educationally from the pupil's IEP. It does not include an organization or agency that operates as a public agency or offers public service, including but not limited to, a state or local agency, or an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, a public university or college, or a public hospital.

- (o) "Nonpublic, nonsectarian school" means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an IEP, employs at least one full-time teacher who holds an appropriate credential authorizing special education services, and is certified by the California Department of Education. It does not include an organization or agency that operates as a public agency or offers public services, including but not limited to, a state or local agency, or an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency or a public university or college.
- (p) "Parent" includes any person having legal custody of a child. "Parent," in addition, includes any adult pupil for whom no guardian or conservator has been appointed and the person having custody of a minor if neither the parent nor legal guardian can be notified of the educational action under consideration. "Parent" also includes a parent surrogate who has been appointed in accordance with Section 7579.5 of the Government Code and Section 56050 of the Education Code. The term "Parent" does not include the state or any political subdivision of government.
- (q) "Pupil" or "Pupil with a disability" means those students, birth through 21 years of age, as defined in Section 300.7 of Title 34 of the Code of Federal Regulations, including those with mental retardation or autism, who meet the requirements of Section 56026 of the Education Code and Sections 3030 and 3031 of Title 5 of the California Code of Regulations and who, because of their impairments, need special education and related services as defined in subsections (22) and (25) of Section 1401 of Title 20 of the United States Code. This term includes handicapped children, children with disabilities and individuals with exceptional needs as defined in Section 56026 of the Education Code. The determination that an individual is a pupil with a disability is made only by an IEP team pursuant to Section 56342 of the Education Code.
- (r) "Qualified" means that a person has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, or, in the absence of such requirements, meets the state–education–agency–approved or recognized requirements and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code.
- (s) "Related services" means those services that are necessary for a pupil with a disability to benefit from his or her special education program in accordance with paragraph Title 20, United States Code Section 1401(22).
- (t) "Special education" means specially designed instruction and related services to meet the unique needs of a pupil with a disability, as described in Section 56031 of the Education Code and Section 300.26 of Title 34 of the Code of Federal Regulations.
- (u) "Special education local plan" means a plan developed in accordance with Sections 56200 through 56218 of the Education Code which identifies each participating LEA's roles and responsibilities for the provision of special education and related services within the service area.
- (v) "Special education local plan area," hereinafter "SELPA," means the service area covered by a special education local plan, and is the governance structure created under any of the planning options of Section 56200 of the Education Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 7570 and 7579.5, Government Code; Section 5328, Welfare and Institutions Code; Sections 1240, 49060–49079, 56023, 56026, 56028, 56031, 56034, 56035, 56050, 56200–56220, 56320–56329, 56341 and 56325, Education Code; Clovis Unified School District (1990, Ninth Circuit) 903 F.2d 635; Section 1401, Title 20,

United States Code; and Sections 300.7, 300.326, 300.330, 300.340–300.350, 300.530–300.534 and 300.560, Title 34, Code of Federal Regulations.

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order, including amendment of subsections (d), (j) and (q)–(v) and amendment of NOTE. transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

### § 60020. Mental Health Definitions.

- (a) "Community mental health service" means a mental health program established by a county in accordance with the Bronzan–McCorquodale Act, Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code.
- (b) "County of origin" for mental health services is the county in which the parent of a pupil with a disability resides. If the pupil is a ward or dependent of the court, an adoptee receiving adoption assistance, or a conservatee, the county of origin is the county where this status currently exists. For the purposes of this program the county of origin shall not change for pupils who are between the ages of 18 and 22.
- (c) "Expanded IEP team" means an IEP team constituted in accordance with Section 7572.5 of the Government Code. This team shall include a representative of the community mental health service authorized to make placement decisions.
- (d) "Host county" means the county where the pupil with a disability is living when the pupil is not living in the county of origin.
- (e) "Local mental health director" means the officer appointed by the governing body of a county to manage a community mental health service.
- (f) "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness.
- (g) "Mental health assessment" is a service designed to provide formal, documented evaluation or analysis of the nature of the pupil's emotional or behavioral disorder. It is conducted in accordance with California Code of Regulations, Title 9, Section 543(b), and Sections 56320 through 56329 of the Education Code by qualified mental health professionals employed by or under contract with the community mental health service.
- (h) "Mental health assessment plan" means a written statement developed for the individual evaluation of a pupil with a disability who has been referred to a community mental health service to determine the need

for mental health services in accordance with Section 56321 of the Education Code.

- (i) "Mental health services" means mental health assessments and the following services when delineated on an IEP in accordance with Section 7572(d) of the Government Code: psychotherapy as defined in Section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management. These services shall be provided directly or by contract at the discretion of the community mental health service of the county of origin.
- (j) "Qualified mental health professional" includes the following licensed practitioners of the healing arts: a psychiatrist; psychologist; clinical social worker; marriage, family and child counselor: registered nurse, mental health rehabilitation specialist, and others who have been waivered under Section 5751.2 of the Welfare and Institutions Code. Such individuals may provide mental health services, consistent with their scope of practice.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 56320, Education Code; and Sections 542 and 543, Title 9, California Code of Regulations.

### HISTORY

- New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order, including amendment of subsections (b), (c) and (j), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60025. Social Services Definitions.

- (a) "Care and supervision" as defined in Welfare and Institutions Code Section 11460, includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.
- (b) "Certified family home" as defined in Welfare and Institutions Code Section 11400(c), means a family residence certified by a foster family agency licensed by the California Department of Social Services and issued a certificate of approval by that agency as meeting licensing standards, and is used only by that foster family agency for placements.
- (c) "Certified, license-pending home" as described in Welfare and Institutions Code Sections 361.2(h), 727(b), and 16507.5(b), is a home that is pending application for licensure as a foster family home, has been certified by the county as meeting the minimum standards for foster family homes, and is lacking any deficiencies which would threaten the physical health, mental health, safety or welfare of the pupil.
- (d) "Community care facility" is a facility licensed by the California Department of Social Services as defined in Health and Safety Code Sec-

- tion 1502(a). For the purposes of this chapter, a community care facility means those facilities listed and defined in this article that provide 24-hour residential care to children.
- (e) "Community treatment facility" as defined in Health and Safety Code Section 1502(a)(8), means any residential facility that provides mental health treatment services to children in a group setting which has the capacity to provide secure containment. The facility's program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code.
- (f) "Foster family agency" as defined in Welfare and Institutions Code Section 11400(g) and Health and Safety Code Section 1502(a)(4), means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private agencies shall be organized and operated on a nonprofit basis
- (g) "Foster family home" as defined in Health and Safety Code Section 1502(a)(5) means any residential facility providing 24—hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. It also means a foster family home described in Health and Safety Code Section 1505.2. For the purpose of this Chapter a foster family home includes a small family home pursuant to Education Code Section 56155.5(b), or the approved home of a relative
- (h) "Group home" as defined in title 22 of the California Code of Regulations, Section 80001(g)(1) means any facility of any capacity, that provides 24—hour care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee. The care and supervision provided by a group home shall be nonmedical except as permitted by Welfare and Institutions Code, Section 17736(b). For the purposes of this Chapter, a group home is a nondetention facility that is organized and operated on a nonprofit basis in accordance with Welfare and Institutions Section 11400(h).
- (i) "Licensed children's institution" as defined in Education Code Section 56155.5(a), for the purposes of this Chapter, means the following community care facilities licensed by the California Department of Social Services: a group home, foster family agency, and community treatment facility.
- (j) "Small family home" as defined in Health and Safety Code Section 1502(a)(6), means any residential facility, in the licensee's family residence, that provides 24—hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code.

NOTE: Authority cited: Section 7587, Government Code; and Sections 10553, 10554, 11462(i) and (j) and 11466.1, Welfare and Institutions Code. Reference: Sections 361.2(h), 727(b), 4094, 11400(c), 11400(g), 11400(h), 11402(a), 16507.5(b), 17710, 17736(b) and 18350, Welfare and Institutions Code; Section 1502(a), Health and Safety Code; Section 56155.5, Education Code; and Section 80001(g)(1), Title 22, California Code of Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).

- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 2. Mental Health Related Services

# § 60030. Local Mental Health and Education Interagency Agreement.

- (a) Each community mental health service and each SELPA within that county shall develop a written local interagency agreement in order to facilitate the provision of mental health services.
- (b) The local mental health director, the county superintendent of schools and/or the local SELPA director, or their designees, shall review the local interagency agreement(s) according to a schedule developed at the local level between the agencies but no less frequently than every three years and ensure that the agreement or agreements are revised as appropriate, to assure compliance with this chapter. This provision does not preclude revision of the local interagency agreement at any time that they determine a revision is necessary. The content of the agreement will remain in effect until the agencies mutually agree upon any revisions.
- (c) The local interagency agreement shall identify a contact person for each agency and include, but not be limited to, a delineation of the procedures for:
- (1) Monitoring compliance with the time lines specified in paragraph (a) of Section 56321 and Section 56344 of the Education Code. This system shall designate each participating agency's responsibilities and identify who will be responsible for monitoring the system;
- (2) Resolving interagency disputes at the local level, including procedures for the continued provision of appropriate services during the resolution of any interagency dispute, pursuant to Government Code Section 7585(f). For purposes of this subdivision only, the term "appropriate" means any service identified in a pupil's IEP, or any service the pupil actually was receiving at the time of the interagency dispute;
- (3) Delivery of a completed referral package to the community mental health service pursuant to subsection (d) of Section 60040 as well as any other relevant pupil information in accordance with procedures ensuring confidentiality within five (5) business days;
- (4) A host county to notify the community mental health service of the county of origin within two (2) working days when a pupil with a disability is placed within the host county by courts, regional centers or other agencies for other than educational reasons;
- (5) Development of a mental health assessment plan and its implementation:
- (6) The participation of qualified mental health professionals at the IEP team meetings pursuant to subsections (d) and (e) of Section 7572 and Section 7572.5 of the Government Code;
- (7) At least ten (10) working days prior notice to the community mental health service of all IEP team meetings, including annual IEP reviews, when the participation of its staff is required;
- (8) The development, review or amendment of the portions of the IEP relating to mental health services, including the goals and objectives of

- mental health services in accordance with Title 20, United States Code Section 1414(d)(1)(A)(vi):
- (9) The provision of mental health services as soon as possible following the development of the IEP pursuant to Section 300.342 of Title 34 of the Code of Federal Regulations;
- (10) Description of the length and duration of mental health services and transportation beyond the traditional school year including the extended year program;
- (11) The transportation of pupils with disabilities when necessary for the provision of mental health services pursuant to the IEP and Section 60200(d)(1)(2):
- (12) The provision of space, support staff and services at the school site, as appropriate, for the delivery of mental health services;
- (13) The identification of a continuum of placement options. These options may include day, public, and state certified nonpublic, nonsectarian school programs, and residential facilities as listed in Section 60025. The community mental health service and the SELPA shall identify a list of mental health, education, and community services that may serve as alternatives to a residential placement for a pupil with a disability who is seriously emotionally disturbed;
- (14) The provision of a system for monitoring contracts with nonpublic, nonsectarian schools to ensure that services on the IEP are provided;
- (15) The development of a resource list composed of qualified mental health professionals who conduct mental health assessments and provide mental health services. The community mental health service shall provide the LEA with a copy of this list and monitor these contracts to assure that services as specified on the IEP are provided;
  - (16) The residential placement of a pupil pursuant to Section 60100;
- (17) Mutual staff development for education and mental health staff pursuant to Section 7586.6(a) of the Government Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 5608, Welfare and Institutions Code; Sections 56140, 56321 and 56344, Education Code; and Section 1414(d), Title 20, United States Code.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New article 2 (sections 60030–60055) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98 No. 44)
- 7. New article 2 (sections 60030–60055) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New article 2 (sections 60030–60055) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order, including amendment of subsections (b), (c)(2)–(4), (c)(6)–(8), (c)(10) and (c)(17) and amendment of NOTE. transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60040. Referral to Community Mental Health Services for Related Services.

(a) A LEA, IEP team, or parent may initiate a referral for assessment of a pupil's social and emotional status pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320, an IEP team may refer a pupil who has been determined to be an individual with exceptional needs or is suspected of being an in-

- dividual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service when a pupil meets all of the criteria in paragraphs (1) through (5) below. Referral packages shall include all documentation required in subsection (b) and shall be provided within five (5) working days of the LEA's receipt of parental consent for the referral of the pupil to the community mental health service.
- (1) The pupil has been assessed by school personnel in accordance with Article 2, commencing with Section 56320, of Chapter 4 of Part 30 of the Education Code.
- (2) The LEA has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the LEA and the community mental health service, and for the observation of the pupil by qualified mental health professionals in an educational setting.
  - (3) The pupil has emotional or behavioral characteristics that:
- (A) Are observed by qualified educational staff as defined in subsection (x) of Section 3001 of Title 5 of the California Code of Regulations in educational and other settings, as appropriate.
  - (B) Impede the pupil from benefiting from educational services.
- (C) Are significant, as indicated by their rate of occurrence and intensity.
- (D) Are associated with a condition that cannot be described solely as a social maladjustment as demonstrated by deliberate noncompliance with accepted social rules, a demonstrated ability to control unacceptable behavior and the absence of a treatable mental disorder.
- (E) Are associated with a condition that cannot be described solely as a temporary adjustment problem that can be resolved with less than three months of school counseling.
- (4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.
- (5) The LEA has provided counseling, psychological, or guidance services to the pupil pursuant to Section 56363 of the Education Code, and the IEP team has determined that the services do not meet the pupil's educational needs; or, in cases where these services are clearly inappropriate, the IEP team has documented which of these services were considered and why they were determined to be inappropriate.
- (b) When referring a pupil to a community health service in accordance with subsection (a), the LEA or the IEP team shall provide the following documentation:
- (1) Copies of the current IEP, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2, commencing with Section 56320, of Chapter 4 of Part 30 of the Education Code, and other relevant information, including reports completed by other agencies.
- (2) A copy of the parent's consent obtained as provided in subsection (a)(2).
- (3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subsection (a).
- (4) A description of the school counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, including the initiation, duration and frequency of the services, or an explanation of why a service was considered for the pupil and determined to be inappropriate.
- (c) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a LEA may refer a pupil who has been determined to be or is suspected of being an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service when a pupil meets the criteria in paragraphs (1) and (2) below. Referral packages shall include all documentation required in subsection (d) and shall be provided within one (1) working day to the community mental health service.

- (1) The pupil meets the criteria in paragraphs (2) through (4) of subsection (a).
- (2) School counseling, psychological and guidance services are clearly inappropriate in meeting the pupil's needs.
- (d) When referring a pupil to a community mental health service in accordance with subsection (c), the LEA shall provide the following documentation:
- (1) Results of preliminary assessments, including those conducted by school personnel in accordance with Article 2, commencing with Section 56320, of Chapter 4 of Part 30 of the Education Code, to the extent they are available, and other relevant information, including reports completed by other agencies.
- (2) A copy of the parent's consent obtained as provided in paragraph (2) of subsection (a).
- (3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subsection (b).
- (4) An explanation as to why school counseling, psychological and guidance services are clearly inappropriate in meeting the pupil's needs.
- (e) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. Nothing in this subsection changes the identification and referral responsibilities imposed on local education agencies under Article 1, commencing with Section 56300, of Chapter 4 of Part 30 of the Education Code.
- (f) The community mental health service shall accept all referrals for mental health assessments made pursuant to subsections (a) and (c).
- (g) If the community mental health service receives a referral for a pupil with a different county of origin, the community mental health service receiving the referral shall forward the referral within one (1) working day to the county of origin, which shall have programmatic and fiscal responsibility for providing or arranging for provision of necessary services. The procedures described in this subsection shall not delay or impede the referral and assessment process.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 56026, 56300 et seq., 56320 et seq. and 56363, Education Code; and Section 3001, Title 5, California Code of Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day
- 6. Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 2–25–99 order, including amendment of subsections (a), (a)(3)(D), (a)(3)(E), (c) and (g) and amendment of NOTE. transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60045. Assessment to Determine the Need for Mental Health Services.

- (a) Within five (5) days of receipt of a referral, pursuant to subsections (a), (c) or (g) of Section 60040, the community mental health service shall review the recommendation for a mental health assessment and determine if such an assessment is necessary.
- (1) If no mental health assessment is determined to be necessary, or the referral is inappropriate, the reasons shall be documented by the community mental health service. The community mental health service shall notify the parent and the LEA of this determination within one (1) working day.
- (2) If the referral is determined to be incomplete, the reasons shall be documented by the community mental health service. The community mental health service shall notify the LEA within one (1) working day and return the referral.
- (b) If a mental health assessment is determined to be necessary, the community mental health service shall notify the LEA, develop a mental health assessment plan, and provide the plan and a consent form to the parent, within 15 days of receiving the referral from the LEA, pursuant to Section 56321 of the Education Code. The assessment plan shall include, but is not limited to, the review of the pupil's school records and assessment reports and observation of the pupil in the educational setting, when appropriate.
- (c) The community mental health service shall report back to the referring LEA or IEP team within 30 days from the date of the receipt of the referral by the community mental health service if no parental consent for a mental health assessment has been obtained.
- (d) Upon receipt of the parent's written consent for a mental health assessment, the community mental health service shall contact the LEA within one (1) working day to establish the date of the IEP meeting. The LEA shall schedule the IEP meeting to be held within fifty (50) days from the receipt of the written consent pursuant to Section 56344 of the Education Code.
- (e) The mental health assessment shall be completed in sufficient time to ensure that an IEP meeting is held within fifty (50) days from the receipt of the written parental consent for the assessment. This time line may only be extended upon the written request of the parent.
- (f) The community mental health service assessor shall review and discuss the mental health service recommendation with the parent and appropriate members of the IEP team. The assessor shall also make a copy of the mental health service assessment report available to the parent at least two days prior to the IEP team meeting.
- (1) If the parent disagrees with the assessor's mental health service recommendation, the community mental health service shall provide the parent with written notification that they may require the assessor to attend the IEP team meeting to discuss the recommendation. The assessor shall attend the meeting if requested to do so by the parent.
- (2) Following the discussion and review of the community mental health service assessor's recommendation, it shall be the recommendation of the IEP team members attending on behalf of the LEA.
- (g) The community mental health service shall provide to the IEP team a written assessment report in accordance with Education Code Section 56327.
- (h) For pupils with disabilities receiving services under this Chapter, the community mental health service of the county of origin shall be responsible for preparing statutorily required IEP reassessments in compliance with the requirements of this Section.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 56321, 56327 and 56344, Education Code.

### HISTORY

- 1. New section refiled 5–1–87 as an emergency; designated effective 5–1–87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–31–87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- 6. Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10-26-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-26-99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order, including amendment of subsections (a)–(b) and (d), repealer and new subsection (e) and amendment of subsections (f) and (h), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60050. Individualized Education Program for Mental Health Services.

- (a) When it is determined, in accordance with Section 7572 of the Government Code, that a mental health service is necessary for a pupil with a disability to benefit from special education, the following documentation shall be included in the mental health portion of the IEP:
- A description of the present levels of social and emotional performance;
- (2) The goals and objectives of the mental health services with objective criteria and evaluation procedures to determine whether they are being achieved;
- (3) A description of the types of the mental health services to be provided; and
- (4) The initiation, duration and frequency of the mental health services.
- (5) Parental approval for the provision of mental health services. This signed consent for treatment is in addition to the signed IEP.
- (b) When completion or termination of IEP specified health services is mutually agreed upon by the parent and the community mental health service, or when the pupil is no longer participating in treatment, the community mental health service shall notify the parent and the LEA which shall schedule an IEP team meeting to discuss and document this proposed change if it is acceptable to the IEP team.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 300.347, Title 34, Code of Federal Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98

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- or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order, including amendment of subsection (b) and amendment of NOTE, transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

### § 60055. Transfers and Interim Placements.

- (a) Whenever a pupil who has been receiving mental health services, pursuant to an IEP, transfers into a school district from a school district in another county, the responsible LEA administrator or IEP team shall refer the pupil to the local community mental health service to determine appropriate mental health services.
- (b) The local mental health director or designee shall ensure that the pupil is provided interim mental health services, as specified in the existing IEP, pursuant to Section 56325 of the Education Code, for a period not to exceed thirty (30) days, unless the parent agrees otherwise.
- (c) An IEP team, which shall include an authorized representative of the responsible community mental health service, shall be convened by the LEA to review the interim services and make a determination of services within thirty (30) days of the pupil's transfer.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 56325, Education Code.

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44)
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 3. Residential Placement

# § 60100. LEA Identification and Placement of a Seriously Emotionally Disturbed Pupil.

- (a) This article shall apply only to a pupil with a disability who is seriously emotionally disturbed pursuant to paragraph (i) of Section 3030 of Title 5 of the California Code of Regulations.
- (b) When an IEP team member recommends a residential placement for a pupil who meets the educational eligibility criteria specified in para-

- graph (4) of subsection (c) of Section 300.7 of Title 34 of the Code of Federal Regulations, the IEP shall proceed in the following manner:
- (1) An expanded IEP team shall be convened within thirty (30) days with an authorized representative of the community mental health service
- (2) If any authorized representative is not present, the IEP team meeting shall be adjourned and be reconvened within fifteen (15) calendar days as an expanded IEP team with an authorized representative from the community mental health service participating as a member of the IEP team pursuant to Section 7572.5 of the Government Code.
- (3) If the community mental health service or the LEA determines that additional mental health assessments are needed, the LEA and the community mental health service shall proceed in accordance with Sections 60040 and 60045.
- (c) Prior to the determination that a residential placement is necessary for the pupil to receive special education and mental health services, the expanded IEP team shall consider less restrictive alternatives, such as providing a behavioral specialist and full–time behavioral aide in the classroom, home and other community environments, and/or parent training in the home and community environments. The IEP team shall document the alternatives to residential placement that were considered and the reasons why they were rejected. Such alternatives may include any combination of cooperatively developed educational and mental health services.
- (d) When the expanded IEP team recommends a residential placement, it shall document the pupil's educational and mental health treatment needs that support the recommendation for residential placement. This documentation shall identify the special education and related mental health services to be provided by a residential facility listed in Section 60025 that cannot be provided in a less restrictive environment pursuant to Title 20, United States Code Section 1412(a)(5).
- (e) The community mental health service case manager, in consultation with the IEP team's administrative designee, shall identify a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is costeffective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment.
- (f) The residential placement shall be in a facility listed in Section 60025 that is located within, or in the county adjacent to, the county of residence of the parents of the pupil with a disability, pursuant to paragraph (3) of subsection (a) of Section 300.552 of Title 34 of the Code of Federal Regulations. When no nearby placement alternative which is able to implement the IEP can be identified, this determination shall be documented, and the community mental health service case manager shall seek an appropriate placement which is as close to the parents' home as possible.
- (g) Rates for care and supervision shall be established for a facility listed in Section 60025 in accordance with Section 18350 of the Welfare and Institutions Code.
- (h) Residential placements for a pupil with a disability who is seriously emotionally disturbed may be made out of California only when no instate facility can meet the pupil's needs and only when the requirements of subsections (d) and (e) have been met. Out-of-state placements shall be made only in residential programs that meet the requirements of Welfare and Institutions Code Sections 11460(c)(2) through (c)(3). For educational purposes, the pupil shall receive services from a privately operated non-medical, non-detention school certified by the California Department of Education.
- (i) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in residential care, the community mental health service shall ensure that:
- (1) The mental health services are specified in the IEP in accordance with Title 20, United States Code Section 1414(d)(1)(A)(vi).
- (2) Mental health services are provided by qualified mental health professionals.

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(j) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a facility listed in Section 60025, the expanded IEP team shall ensure that placement is in accordance with admission criteria of the facility. Note: Authority cited: Section 7587, Government Code. Sections 10553, 10554, 11462(i) and (j) and 11466.1, Welfare and Institutions Code. Reference: Sections 7576(a) and 7579, Government Code; Sections 11460(c)(2)–(c)(3), 18350 and 18356, Welfare and Institutions Code; Sections 1412 and 1414, Title 20, United States Code; and Sections 300.7 and 300.552, Title 34, Code of Federal Regula-

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87. No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New article 3 (sections 60100–60110) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- 6. Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New article 3 (sections 60100–60110) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New article 3 (sections 60100–60110) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order, including amendment of section heading, amendment of subsections (b)–(b)(2), (d) and (i)(1) and amendment of Note, transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60110. Case Management for a Pupil with a Disability Who Is Seriously Emotionally Disturbed and Is in a Residential Placement.

- (a) Upon notification of the expanded IEP team's decision to place a pupil with a disability who is seriously emotionally disturbed into residential care, the local mental health director or designee shall immediately designate a case manager who will perform case management services as described in subsections (b) and (c).
- (b) The case manager shall coordinate the residential placement plan of a pupil with a disability who is seriously emotionally disturbed as soon as possible after the decision has been made to place the pupil in a residential placement, pursuant to Section 300.342 of Title 34 of the Code of Federal Regulations.
- (1) The residential placement plan shall include provisions, as determined in the pupil's IEP, for the care, supervision, mental health treatment, psychotropic medication monitoring, if required, and education of a pupil with a disability who is seriously emotionally disturbed.
- (2) The LEA shall be responsible for providing or arranging for the special education and non- mental health related services needed by the pupil.
- (3) When the expanded IEP team determines that it is necessary to place a pupil with a disability who is seriously emotionally disturbed in a community treatment facility, the casemanager shall ensure that placement is in accordance with admission and, continuing stay, and discharge criteria of the community treatment facility.
- (c) Case management shall include, but not be limited to, the following responsibilities:
- (1) To convene a meeting with the parents and representatives of public and private agencies, including educational staff, and to identify an

- appropriate residential placement from those defined in Section 60025 and excluding local inpatient, private psychiatric, and state hospital facilities
- (2) To identify, in consultation with the IEP team's administrative designee, a mutually satisfactory placement that is acceptable to the parent and addresses the pupil's educational and mental health needs in a manner that is cost–effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment.
- (3) To complete the payment authorization in order to initiate payments for residential placement in accordance with Section 18351 of the Welfare and Institutions Code.
- (4) To assure the completion of the community mental health service and LEA financial paperwork or contracts for the residential placement of a pupil with a disability who is seriously emotionally disturbed.
- (5) To develop the plan and assist the family with the pupil's social and emotional transition from home to the residential placement and the subsequent return to the home.
- (6) To facilitate the enrollment in the residential placement of a pupil with a disability who is seriously emotionally disturbed.
- (7) To notify the LEA that the placement has been arranged and to coordinate the transportation of the pupil to the facility if needed.
- (8) To conduct quarterly face—to—face contacts at the residential facility with a pupil with a disability who is seriously emotionally disturbed to monitor the level of care and supervision and the provision of the mental health services as required by the IEP. In addition, for children placed in a community treatment facility, an evaluation shall be made within every 90 days of the residential placement of the pupil to determine if the pupil meets the continuing stay criteria as defined in Welfare and Institutions Code Section 4094 and implementing mental health regulations.
- (9) To notify the parent and the LEA or designee if there is a discrepancy between the level of care, supervision, or provision of mental health services and the requirements of the IEP.
- (10) To schedule and attend the next expanded IEP team meeting with the expanded IEP team's administrative designee within six months of the residential placement of a pupil with a disability who is seriously emotionally disturbed and every six months thereafter as long as the pupil remains in residential placement.
- (11) To facilitate placement authorization from the county's interagency placement committee pursuant to Section 4094.5(e)(1) of the Welfare and Institutions Code, by presenting the case of a pupil with a disability who is seriously emotionally disturbed prior to placement in a community treatment facility.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 4094, Welfare and Institutions Code; Section 300.342, Title 34, Code of Federal Regulations; and Section 3061, Title 5, California Code of Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10-26-98 as an emergency; operative 10-29-98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by

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- 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order, including amendment of subsections (b)(1), (c)(3) and (c)(10) and amendment of NOTE, transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 4. Financial Provision for Mental Health Services, Special Education and Residential Placement

# § 60200. Financial Responsibilities.

- (a) The purpose of this article is to establish conditions and limitations for reimbursement for the provision of special education instruction, designated instruction and services, related services, and residential placement described in Articles 2 and 3 of this chapter.
- (b) Special education instruction, designated instruction and services, related services, and residential placements are to be provided at no cost to the parent.
- (c) The community mental health service of the county of origin shall be responsible for the provision of assessments and mental health services included in an IEP in accordance with Sections 60045, 60050, and 60100. Mental health services shall be provided either directly by the community mental health service or by contractors. All services shall be delivered in accordance with Section 523 of Title 9 of the California Code of Regulations.
- (1) The host county shall be responsible for making its provider network available and shall provide the county of origin a list of appropriate providers used by the host county's managed care plan who are currently available to take new referrals. Counties of origin shall negotiate with host counties to obtain access to limited resources, such as intensive day treatment and day rehabilitation.
- (2) The county of origin may also contract directly with providers at a negotiated rate.
  - (d) The LEA shall be financially responsible for:
- (1) The transportation of a pupil with a disability to and from the mental health services specified on the pupil's IEP and in accordance with subsection (a) of Section 300.13 of Title 34 of the Code of Federal Regulations:
- (2) The transportation of a pupil to and from the residential placement as specified on the IEP and in accordance with Section 56221 of the Education Code; and
- (3) The special education instruction, non-mental health related services, and designated instruction and services agreed upon in the non-public, nonsectarian school services contract or a public program arranged with another SELPA or LEA.
- (e) The community mental health service shall be responsible for authorizing payment to the facilities listed in Section 60025 based upon rates established by the Department of Social Services in accordance with Sections 18350 through 18356 of the Welfare and Institutions Code.
- (f) Upon receipt of the authorization from the community mental health service, pursuant to subsection (e), including documentation that the pupil is eligible for residential placement as a seriously emotionally disturbed pupil, the county welfare department shall issue payments in accordance with Section 18351 of the Welfare and Institutions Code to providers of residential placement.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 18350–18356, Welfare and Institutions Code; and Section 300.13, Title 34, Code of Federal Regulations.

# HISTORY

 New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.

- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New article 4 (section 60200) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New article 4 (section 60200) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New article 4 (section 60200) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order, including amendment of subsections (d)(1) and amendment of NOTE, transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 5. Occupational Therapy and Physical Therapy

# § 60300. California Children's Services (CCS) Medical Therapy Program Definitions.

- (a) "Assessment for medically necessary occupational therapy and physical therapy" means the comprehensive evaluation of the physical and functional status of a pupil who has a medical therapy program eligible condition.
- (b) "Assessment plan" for the CCS Medical Therapy Program for pupils with a disability who have an IEP means a written statement describing proposed:
- (1) Procedures necessary for determination of medical eligibility for the CCS medical therapy program; or
- (2) Procedures necessary for the redetermination of need for medically necessary physical therapy or occupational therapy for a pupil known to be eligible for the CCS medical therapy program.
- (c) "Assessment report for therapy" means a written document of the results of a pupil's assessment for medically necessary occupational therapy or physical therapy.
- (d) "CCS Panel" means that group of physicians and other medical providers of services who have applied to and been approved by CCS.
- (e) "Dependent county agency" means the CCS administrative organization in a county that administers the CCS program jointly with the State pursuant to Sections 123850 and 123905 of the Health and Safety Code.
- (f) "Documented physical deficit" refers to a pupil's motor dysfunction recorded on the referral for special education and related services by the Local Education Agency and documented in the pupil's CCS medical record.
- (g) "Independent county agency" means the CCS administrative organization in a county that administers the CCS program independently pursuant to Section 123850 of the Health and Safety Code.
- (h) "Medical therapy conference" means a team meeting held in the medical therapy unit where medical case management for the pupil's medical therapy program eligible condition is provided by the medical therapy conference team as described in (i).
- (i) "Medical therapy conference team" means a team composed of the pupil, parent, physician and occupational therapist and/or physical therapist, or both. The team may include, with the consent of the pupil's parent(s), an education representative who is present for the purpose of coordination with medical services.

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- (j) "Medical therapy program eligible condition" are those diagnoses that make a pupil eligible for medical therapy services and include the following diagnosed neuromuscular, musculoskeletal, or muscular diseases:
- (1) Cerebral palsy, a nonprogressive motor disorder with onset in early childhood resulting from a lesion in the brain and manifested by the presence of one or more of the following findings:
  - (A) Rigidity or spasticity;
- (B) Hypotonia, with normal or increased deep tendon reflexes and exaggeration or persistence of primitive reflexes beyond the normal age;
  - (C) Involuntary movements, athetoid, choreoid, or dystonic; or
- (D) Ataxia, incoordination of voluntary movement, dysdiadochokinesia, intention tremor, reeling or shaking of trunk and head, staggering or stumbling, and broad-based gait.
- (2) Other neuromuscular diseases that produce muscle weakness and atrophy, such as poliomyelitis, myasthenias, muscular dystrophies;
- (3) Chronic musculoskeletal diseases, deformities or injuries, such as osteogenesis imperfecta, arthrogryposis, rheumatoid arthritis, amputation, and contractures resulting from burns.
- (k) "Medical therapy services" are occupational therapy or physical therapy services that require a medical prescription and are determined to be medically necessary by CCS. Medical therapy services include:
- (1) "Treatment", an intervention to individuals or groups of pupils in which there are occupational therapy or physical therapy services as per California Business and Professions Code, Chapter 5.7, Article 2, Section 2620.
- (2) "Consultation", an occupational therapy or physical therapy activity that provides information and instruction to parents, care givers or LEA staff, and other medical services providers;
- (3) "Monitoring", a regularly scheduled therapy activity in which the therapist reevaluates the pupil's physical status, reviews those activities in the therapy plan which are provided by parents, care givers or LEA staff, and updates the therapy plan as necessary; and
  - (4) Medical therapy conference as defined in (h).
- (l) "Medical therapy unit" means a CCS and LEA approved public school location where medical therapy services, including comprehensive evaluations and medical therapy conferences, are provided by CCS.
- (m) "Medical therapy unit satellite" means a CCS and LEA approved extension of an established medical therapy unit where medical therapy services may be provided by CCS. Comprehensive evaluations and medical therapy conferences are not a part of medical therapy unit satellite services.
- (n) "Medically necessary occupational therapy or physical therapy services" are those services directed at achieving or preventing further loss of functional skills, or reducing the incidence and severity of physical disability.
- (o) "Necessary equipment" means that equipment, provided by the LEA, which is required by the medical therapy unit staff to provide medically necessary occupational therapy and/or physical therapy services to a pupil with a medical therapy program eligible condition.
- (p) "Necessary space" means the facilities, which are provided by the LEA for a medical therapy unit or a medical therapy unit satellite, and enable the medical therapy unit staff to provide medically necessary therapy services to a pupil with a medical therapy program eligible condition.
- (q) "Occupational therapy and physical therapy" mean services provided by or under the supervision of occupational therapists and physical therapists pursuant to California Code of Regulations, Title 5, Section 3051.6(b).
- (r) "Therapy plan" means the written recommendations for medically necessary occupational therapy or physical therapy services based on the results of the therapy assessment and evaluation and is to be included in the individualized education program or individualized family service plan.
- NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7575, Government Code; Sections 123825, 123850, 123875 and 123905, Health and Safety Code; Sections 3001(x) and 3051.6(b) of Title 5, California Code of

Regulations; and Section 2620 of Chapter 5.7, Article 2, California Business and Professions Code.

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats, 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New article 5 (sections 60300–60330) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- 6. Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New article 5 (sections 60300–60330) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New article 5 (sections 60300–60330) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order, including amendment of subsection (f), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60310. Local Interagency Agreements Between CCS and Education Agencies.

- (a) In order to facilitate the provision of services described in subdivisions (a), (b), (d), and (e) of Section 7572 of the Government Code and subdivisions (a), (b), and (d) of Section 7575 of the Government Code, each independent county agency and each authorized dependent county agency of CCS shall appoint a liaison for the county agency of CCS. The county Superintendent of Schools or SELPA director shall ensure the designation of a liaison for each SELPA in each local plan.
- (b) In the event of multi-SELPA counties or multi-county SELPAs, the liaisons representing education and CCS shall develop a process for interagency decision making that results in a local interagency agreement.
- (c) Each independent county agency and each dependent county agency of CCS and the county Superintendent of Schools or SELPA director shall ensure the development and implementation of a local interagency agreement in order to facilitate the provision of medically necessary occupational therapy and physical therapy which shall include at a minium a delineation of the process for:
- (1) Identifying a contact person within each LEA in the SELPA and within each CCS county agency;
- (2) Referring pupils, birth to twenty—one years of age, who may have or are suspected of having a neuromuscular, musculoskeletal, or other physical impairment who may require medically—necessary occupational therapy or physical therapy.
- (3) Exchanging between the agencies the educational and medical information concerning the pupil with a disability upon receiving the parent's written, informed consent obtained in accordance with Section 300.500 of Title 34 of the Code of Federal Regulations.
- (4) Giving 10 days notice to the county CCS agency of all IEP team meetings for pupils served by CCS medical therapy program;
- (5) Giving 10 days notice to the LEA and the parent of an impending change in the CCS medical therapy program services which may necessitate a change in the IEP;
- (6) Describing the methods of participation of CCS in the IEP team meetings pursuant to Government Code Section 7572(e);
- (7) Developing or amending the therapy services indicated in the pupil's IEP in accordance with Section 56341 of the Education Code;

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- (8) Transporting pupils with disabilities to receive medically-necessary occupational therapy or physical therapy services at the medical therapy unit or medical therapy unit satellite;
- (9) Determining the need for and location of medical therapy units or medical therapy unit satellites, or other off–site facilities authorized by state CCS and the California Department of Education;
- (10) Approving the utilization of designated therapy space when not in use by CCS staff.
  - (11) Planning for joint staff development activities;
- (12) Resolving conflicts between the county CCS agency and the LEA; and
- (13) Annually reviewing the local interagency agreement and modifying it as necessary.
  - (d) The local interagency agreement shall also include:
- (1) The name of the LEA responsible for the provision, maintenance, and operation of the facilities housing the medical therapy unit or medical therapy unit satellite during the CCS work day on a twelve—month basis;
- (2) The name of the LEA having the fiscal/administrative responsibility for the provision and maintenance of necessary space, equipment, and supplies; and
- (3) The process for change in fiscal/administrative responsibility for the provision and maintenance of necessary space, equipment, and supplies.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 7572 and 7575, Government Code; Section 123875, Health and Safety Code; Section 300.500 of Title 34, Code of Federal Regulations; and Section 56341, Education Code.

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60320. Referral and Assessment.

- (a) Pupils referred to the LEA for assessment of fine and gross motor or physical skills shall be considered for assessment either by the LEA or by CCS depending on the information contained in the referral and the pupil's documented physical deficit pursuant to Section 7572 of the Government Code.
- (b) If the LEA determines that a referral to CCS is not appropriate, the LEA shall propose an assessment plan to the parents.
- (c) If the pupil is referred to CCS by the LEA, the referral must be accompanied by:
  - (1) The pupil's medical diagnosis;
  - (2) Current medical records;

- (3) Parental permission for exchange of information between agencies; and
  - (4) Application for the CCS program if the pupil is unknown to CCS.
- (d) If medical eligibility cannot be determined by medical records submitted, CCS shall:
- (1) Notify the parent and LEA within 15 days of the receipt of the referral;
  - (2) Seek additional medical information; and
- (3) If the additional medical information sought in subdivision (2) does not establish medical eligibility, and if the pupil's diagnosis is cerebral palsy, then refer the pupil to a CCS panel physician for a neurological examination.
- (e) If CCS determines that the pupil is ineligible because the pupil's medical condition is not a medical therapy program eligible condition, CCS shall notify the parent and LEA within five days of the determination of eligibility status for the medical therapy program.
- (f) If CCS determines the pupil has a medical therapy program eligible condition, CCS shall propose a therapy assessment to the parents and obtain written consent for the assessment of the need for medically–necessary occupational therapy or physical therapy. This assessment for therapy shall be implemented not more than 15 days following the determination of whether the pupil has a medical therapy program eligible condition.
- (g) Upon receipt of the parent's written consent for an assessment, the CCS agency shall send a copy of the parent's consent to the LEA which shall establish the date of the IEP team meeting. The LEA shall schedule an IEP team meeting to be held within 50 days from the date parental consent is received by CCS.
- (h) When CCS determines a pupil needs medically necessary occupational therapy or physical therapy, CCS shall provide the LEA and the parent a copy of the completed assessment report for therapy or a proposed therapy plan prior to the scheduled IEP meeting.
- (i) When CCS determines a pupil does not need medically-necessary physical therapy or occupational therapy, the LEA and the parent shall be provided with the completed assessment report for therapy and a statement which delineates the basis for the determination.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 7572 and 7575(a), Government Code; Sections 123830, 123860 and 123875, Health and Safety Code; Section 300.532 of Title 34, Code of Federal Regulations; Sections 56320, 56321, 56329 and 56344, Education Code; and Section 3051.6 of Title 5, California Code of Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order, including amendment of subsections (d)(1), (e) and (i), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

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# § 60323. Medical Therapy Program Responsibilities.

- (a) The Medical Therapy Conference shall assess the pupil's need for occupational therapy and physical therapy. The determination of medical necessity shall be based on the pupil's physical and functional status.
- (b) The Medical Therapy Conference shall review the therapy plan to ensure the inclusion of measurable functional goals and objectives for services to be performed by occupational therapists and physical therapists, as well as activities that support the goals and objectives to be performed by parents or LEA staff to maintain or prevent loss of function.
- (c) The Medical Therapy Conference team shall be responsible for approval of therapy plans and either the Medical Therapy Conference physician shall write the prescription for those services provided to pupils under his supervision or review those prescriptions submitted by the pupil's private physician for compliance with (a) and (b) of this section.
- (d) Medically necessary therapy services are provided at a level dependent on the pupil's physical and functional status as determined and prescribed by the CCS paneled physician of the specialty appropriate for treating the pupil's Medical Therapy Program eligible condition and who has been authorized by the program to supervise the pupil's Medical Therapy Program eligible condition.
- (e) The medical necessity of occupational therapy or physical therapy services delivered to pupils not participating in a Medical Therapy Conference because there is not a Medical Therapy Conference in their geographical area shall be determined by the state program medical consultant or CCS designee.
- (f) Medical therapy services must be provided by or under the supervision of a registered occupational therapist or licensed physical therapist in accordance with CCS regulations and requirements. This therapy does not include fine and gross motor activities which can be provided by qualified personnel, pursuant to California Code of Regulations, Title 5, Section 2620.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7575, Government Code; Sections 123825, 123850 and 123905, Health and Safety Code; and Section 3001(x) of Title 5, California Code of Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order, including amendment of subsection (b), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60325. Individualized Education Program for Therapy Services.

- (a) CCS shall provide a copy of the assessment and evaluation report and the proposed therapy plan to the IEP team which shall include:
  - (1) A statement of the pupil's present level of functional performance;

- (2) The proposed functional goals to achieve a measurable change in function or recommendations for services to prevent loss of present function and documentation of progress to date;
- (3) The specific related services required by the pupil, including the type of physical therapy or occupational therapy intervention, treatment, consultation, or monitoring;
- (4) The proposed initiation, frequency, and duration of the services to be provided by the medical therapy program; and
  - (5) The proposed date of medical evaluation.
- (b) CCS shall participate in the IEP team as set forth in Government Code Section 7572(e).
- (c) CCS shall notify the IEP team and parent in writing within 5 days of a decision to increase, decrease, change the type of intervention, or discontinue services for a pupil receiving medical therapy services. If the parent is present at time the decision is made, he or she will also be verbally informed of the decision.
- (d) The IEP team shall be convened by the LEA pursuant to subsection (c) of this section or when there is an annual or triennial review or a review requested by the parent or other authorized persons.
- (e) The LEA shall convene the IEP team to review all assessments, request additional assessments if needed, determine whether fine or gross motor or physical needs exist, and consider designated instruction and services or related services that are necessary to enable the pupil to benefit from the special education program.
- (f) When the IEP team determines that occupational therapy or physical therapy services are necessary for the pupil to benefit from the special education program, goals and objectives relating to the activities identified in the assessment reports shall be written into the IEP and provided by personnel qualified pursuant to the California Code of Regulations, Title 5, Section 3051.6.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 7572(e) and 7575, Government Code; Section 56345, Education Code; and Section 3051.6 of Title 5, California Code of Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order, including amendment of subsection (a)(4), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60330. Space and Equipment for Occupational Therapy and Physical Therapy.

(a) The medical therapy unit shall have necessary space and equipment to accommodate the following functions: administration, medical therapy conference, comprehensive evaluation, private treatment, activities of daily living, storage, and modification of equipment. The specific space and equipment requirements are dependent upon local needs as de-

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termined by joint agreement of state CCS, county CCS, and LEAs, and approved by both the California Department of Education and the State Department of Health Services.

- (b) The space and equipment of the medical therapy unit and medical therapy unit satellites shall be for the exclusive use of the CCS' staff when they are on site. The special education administration of the LEA in which the units are located shall coordinate with the CCS' staff for other use of the space and equipment when the CCS' staff is not present.
- (c) All new construction, relocation, remodeling or modification of medical therapy units and medical therapy unit satellites shall be mutually planned and approved by the California Department of Education and the State Department of Health Services.

NOTE: Authority Cited: Section 7587, Government Code. Reference: Section 7575(d), Government Code.

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 6. Home Health Aide

# § 60400. Specialized Home Health Aide.

- (a) The Department of Health Services shall be responsible for providing the services of a home health aide when the local education agency (LEA) considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:
- (1) The California Medical Assistance Program (Medi–Cal) provides life–supporting medical services via a home health agency during the time the pupil would be in school or traveling between school and home.
- (2) The medical services provided require that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.
- (b) For purposes of this section, "life supporting medical services" means services to a pupil with a disability that is dependent on a medical technology or device that compensates for loss of the normal use of vital bodily function and who requires daily skilled nursing care to divert further disability or death.
- (c) The department shall determine the appropriate level of care-giver, based on medical necessity, to provide the services.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7575(e), Government Code; and Section 51337 of Title 22, California Code of Regulations.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New article 6 (section 60400) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New article 6 (section 60400) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New article 6 (section 60400) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 7. Exchange of Information Between Education and Social Services

# § 60505. Community Care Facilities.

- (a) The Department of Social Services shall biannually provide the Superintendent of Public Instruction a current rates list of group homes and foster family agencies.
- (b) The Superintendent of Public Instruction shall biannually provide each county office of education a current list of licensed children's institutions pursuant to Section 56156 of the Education Code.
- (c) The county superintendent of schools, in accordance with Section 56156(d) of the Education Code, shall biannually provide the SELPA director a current list of the licensed children's institutions within the county.
- (d) The county office of education shall notify the director of each licensed children's institution of the appropriate person to contact regarding pupils with disabilities.
- (e) The SELPA director and the administrator of the LEA in which a group home or small family home is located shall provide the facility licensee the following information:
- (1) The types and locations of public and state certified nonpublic, nonsectarian special education programs available within the SELPA; and
- (2) The ability of the LEAs within the SELPA to absorb, expand, or to open new programs to meet the needs of the pupil population given the limitations of instructional personnel service units, available school facilities, funds, and staff.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7580, Government Code; and Section 56156, Education Code.

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).

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- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New article 7 (sections 60505–60510) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New article 7 (sections 60505–60510) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New article 7 (sections 60505–60510) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2-25-99 order transmitted to OAL 6-25-99 and filed 8-9-99 (Register 99, No. 33).

# § 60510. Prior Notification.

- (a) The court, regional center for the developmentally disabled, or public agency other than an educational agency shall notify the SELPA director, in writing or by telephone, prior to placing a pupil with a disability in a facility listed in Section 60025, and provide the following relevant information within ten days:
- (1) The name of the last school attended, the contact person at that school, and the available educational records, including the current IEP.
- (2) A copy or summary of the most recent psychological and medical records relevant to educational planning which are maintained by the agency.
- (3) The name, address and telephone number of the parent who has the responsibility to represent the pupil in educational matters and to sign the IEP for special education, designated instruction and services and related services.
- (4) The name, address and telephone number of the individual with designated responsibility to sign for consent for non-emergency medical services.
- (5) The name of the administrator/designee, address, telephone number, and licensing status of a home under consideration for the pupil.
- (6) A description of any special considerations related to transporting the pupil.
- (7) Signed consents by the parent to exchange information relevant to IEP planning and individual program planning.
- (8) When an agency makes an emergency placement to protect the physical, mental health or safety of a pupil, the agency shall furnish the SELPA director the required information within three days after the placement.
- (b) The SELPA director shall provide the placing agency with information about the availability of an appropriate special education program in the SELPA in which the home is located. This should occur within seven days of receipt of the notice of placement.
- (1) If no appropriate special education placements exist within the SELPA, and the placement options are home instruction or in a public or nonpublic facility located in another SELPA, the placing agency should make every effort to place the pupil in another SELPA that has appropriate available residential and educational programs.
- (2) When the agency places a pupil in a licensed children's institution, as defined in this Chapter which has an on–grounds, certified, nonpublic, nonsectarian school, the pupil may attend the education program only if the SELPA's IEP team has determined that there is no appropriate public education program in the community and that the on–grounds program is appropriate and can implement the pupil's IEP.
- (3) When the IEP team makes the determination that the on-grounds program is appropriate, the LEA may then contract for educational services with the nonpublic school.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 7579 and 7580, Government Code; and Section 56156, Education Code.

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 4. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New section filed 6-26-98 as an emergency; operative 7-1-98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 8. Procedural Safeguards

# § 60550. Due Process Hearings.

- (a) Due process hearing procedures apply to the resolution of disagreements between a parent and a public agency regarding the proposal or refusal of a public agency to initiate or change the identification, assessment, educational placement, or the provision of special education and related services to the pupil.
- (b) Upon receiving a request for a due process hearing regarding the services provided or refused by another agency, the Superintendent of Public Instruction or designee shall send the state and local agency involved a copy of the hearing request, the name of the assigned mediator, and the date of the mediation meeting in accordance with Section 56503 of the Education Code. Nothing in this section shall preclude any party from waiving mediation.
- (c) If the mediator cannot resolve the issues, a state level hearing shall be conducted by a hearing officer in accordance with Section 56505 of the Education Code.
- (d) Each agency which is identified by the State Superintendent of Public Instruction or designee as a potentially responsible party and which has been involved in a proposal or refusal to provide a service is responsible for preparing documentation and providing testimony for the hearing officer.
- (e) The hearing officer shall be knowledgeable in the laws governing administrative hearings. In addition, the hearing officer shall be knowledgeable about the provisions of Chapter 26.5 of the Government Code and applicable laws relevant to special education, community mental health and the California Children's Services Program. For hearings related to the provision of occupational and/or physical therapy, the hearing officer shall rule according to Government Code Section 7575(a) which specifies:
- (1) "Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 2, commencing with Section 123825 et. seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the pupil's IEP.

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- (2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, which the IEP team determines are necessary in order to assist a pupil to benefit from special education, shall be provided by the LEA by qualified personnel whose employment standards are covered by the Education Code and implementing regulations."
- (f) The hearing decision shall be the final administrative determination regarding the provision of educational and related services, and is binding on all parties.
- (g) Nothing in this article shall preclude the Department of Social Services from instituting, maintaining and concluding an administrative action to revoke or temporarily suspend a license pursuant to the Community Care Facilities Act, Health and Safety Code Section 1500 et. Seq.
- (h) Nothing in this article shall interfere with the discharge of a pupil placed in a community treatment facility who does not meet admission or continuing stay criteria and/or does meet discharge criteria as defined in Welfare and Institutions Code Section 4094 and implementing CCL regulations.
- (i) The California Department of Education is fiscally responsible for services provided by the mediator and the hearing officer in response to a parent's request for a due process hearing.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7586, Government Code; Sections 56501–56507, Education Code; Section 3082 of Title 5, California Code of Regulations; Section 4094, Welfare and Institutions Code; Corbett v. Regional Center of the East Bay Inc. and Linda McMahon, Director of the Department of Social Services, (1988) 9th Cir. 699 F. Supp. 230; In re Roger S. (1977) 19 Cal.3d. 921; and In re Michael E. (1975) 15 Cal.3d. 183.

### HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1988 pursuant to Item 4440–131–001(b)(2), Chapter 135, Statutes of 1987 (Register 87, No. 46).
- 3. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, pursuant to Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) repealed June 30, 1997, by operation of Government Code section 7587, as amended by Stats. 1996, c. 654 (A.B. 2726, §4.) (Register 98, No. 26).
- 5. New article 8 (sections 60550–60560) and section filed 6–26–98 as an emergency; operative 7–1–98 (Register 98, No. 26). A Certificate of Compliance must be transmitted to OAL by 10–29–98 or emergency language will be repealed by operation of law on the following day.
- Editorial correction restoring prior HISTORIES 1–2, adding new HISTORIES 3–4, and renumbering and amending existing HISTORY 1 to new HISTORY 5 (Register 98, No. 44).
- 7. New article 8 (sections 60550–60560) and section refiled 10–26–98 as an emergency; operative 10–29–98 (Register 98, No. 44). A Certificate of Compliance must be transmitted to OAL by 2–26–99 or emergency language will be repealed by operation of law on the following day.
- 8. New article 8 (sections 60550–60560) and section refiled 2–25–99 as an emergency; operative 2–26–99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–99 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 2–25–99 order, including amendment of subsection (e), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60560. Compliance Complaints.

Allegations of failure by an LEA, Community Mental Health Services or CCS to comply with these regulations, shall be resolved pursuant to Chapter 5.1, commencing with Section 4600, of Division 1 of Title 5 of the California Code of Regulations.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7585, Government Code; and Section 4650, Title 5, California Code of Regulations

# HISTORY

- 1. New section refiled 5-1-87 as an emergency; designated effective 5-1-87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-31-87.
- 2. Division 9 (Chapter 1, Articles 1–9, Sections 60000–60610, not consecutive) shall not be subject to automatic repeal until the final regulations take effect on

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- 8. New section refiled 2-25-99 as an emergency; operative 2-26-99 (Register 99, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-28-99 or emergency language will be repealed by operation of law on the following day.
- 9. Certificate of Compliance as to 2–25–99 order, including repealer of subsection (a) designator and amendment of section, transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# Article 9. Interagency Dispute Resolution

# § 60600. Application of Procedures.

- (a) The procedures of this article apply as specified in Government Code 7585, when there is a dispute between or among the California Department of Education or a LEA or both and any agency included in Sections 7575 and 7576 of the Government Code over the provision of related services, when such services are contained in the IEP of a pupil with a disability. This article also applies when the responsibility for providing services, ordered by a hearing officer or agreed to through mediation pursuant to Sections 56503 and 56505 of the Education Code, is in dispute among or between the public agencies.
- (b) A dispute over the provision of services means a dispute over which agency is to deliver or to pay for the services when the service is contained in the IEP, mediation agreement, or due process hearing decision. The IEP of a pupil with a disability, and, when appropriate, a copy of the mediation agreement negotiated through the mediator or decision of the hearing officer shall accompany the request for a state interagency dispute resolution.
- (c) As specified in Section 7585 of the Government Code, when a service has been included in an IEP by an IEP team without the recommendation of the qualified professional in accordance with Section 7572 of the Government Code, the LEA shall be solely responsible for the provision of the service. In such circumstances, the dispute, if any, is between the parent and the LEA and shall be resolved pursuant to Title 5 of the California Code of Regulations.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 7572 and 7585, Government Code; and Sections 56503 and 56505, Education Code.

# HISTORY

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- 9. Certificate of Compliance as to 2–25–99 order, including amendment of subsection (b), transmitted to OAL 6–25–99 and filed 8–9–99 (Register 99, No. 33).

# § 60610. Resolution Procedure.

- (a) Whenever notification is filed pursuant to subsection (a) of Section 7585 of the Government Code, the dispute procedures shall not interfere with a pupil with a disability's right to receive a free, appropriate public education.
- (1) If one of the departments or local agencies specified in Sections 7575, 7576, 7577, and 7578 of the Government Code has been providing the service prior to notification of the failure to provide a related service or designated instruction and service, that department or local agency shall pay for, or provide, at it's discretion, the service until the dispute resolution proceedings are completed.
- (2) If no department or local agency specified in this section has provided the service prior to the notification of the dispute, the State Superintendent of Public Instruction shall ensure that the LEA provides the service in accordance with the IEP, until the dispute resolution proceedings are completed.
- (3) Arrangements, other than those specified in paragraphs (1) and (2) of subsection (a), may be made by written agreement between the involved public agencies, provided the pupil with disabilities' IEP is not altered, except as to which agency delivers or pays for the service if such specification is included in the IEP.
- (b) In resolving the dispute, the State Superintendent of Public Instruction and Secretary of the Health and Welfare Agency or their designees shall meet to resolve the issue within 15 days of receipt of the notice.

- (c) Once the dispute resolution procedures have been completed, the department or local agency determined responsible for the service shall pay for, or provide the service, and shall reimburse the other agency which provided the service pursuant to subsection (a) of this section, if applicable.
- (d) A written copy of the resolution shall be mailed to affected parties pursuant to Section 7585 of the Government Code.
- (e) The resolution of the dispute shall be communicated to the originating party within 60 days from the receipt of the complaint by either agency.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 7575, 7576, 7577, 7578 and 7585, Government Code.

### HISTORY

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\* \* \*

Barclays Official

# CALIFORNIA CODE OF REGULATIONS

# **SUBJECT INDEX**

# Title 2 Administration



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